

CLOSED

**U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:12-cv-02405-RAL-TGW**

Glass et al v. City of St. Petersburg, Florida et al

Assigned to: Judge Richard A. Lazzara

Referred to: Magistrate Judge Thomas G. Wilson

Demand: \$15,000

Case in other court: 6th Judicial Circuit, Pinellas County, FL,
12-12047-CI-19

Cause: 42:1983 Civil Rights Act

Date Filed: 10/24/2012

Date Terminated: 11/28/2012

Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Federal Question

Plaintiff**Lauren Rachel Glass**represented by **Roy L. Glass**Law Office of Roy L. Glass, PA
5501 Central Ave

St Petersburg, FL 33710

727/384-8888

Fax: 727/345-3008

Email: lroyglas@tampabay.rr.com

LEAD ATTORNEY**ATTORNEY TO BE NOTICED****Plaintiff****Roy L. Glass**represented by **Roy L. Glass**

(See above for address)

LEAD ATTORNEY**ATTORNEY TO BE NOTICED**

V.

Defendant**City of St. Petersburg, Florida***a Municipal Corporation*represented by **Joseph P. Patner**

City Attorney's Office

PO Box 2842

St Petersburg, FL 33731-2842

727/893-7401

Email: joseph.patner@stpete.org

LEAD ATTORNEY**ATTORNEY TO BE NOTICED****Defendant**

Misty Swanson*police officer, jointly and severally*represented by **Joseph P. Patner**

(See above for address)

LEAD ATTORNEY**ATTORNEY TO BE NOTICED**

Date Filed	#	clear	Docket Text
10/24/2012	1	<input type="checkbox"/> 135.46KB	NOTICE OF REMOVAL from 6th Judicial Circuit in and for Pinellas County, FL, case number 12-12047-CI-19 filed in State Court on 10/5/12. Filing fee \$ 350, receipt number TPA13964 filed by Misty Swanson, City of St. Petersburg, Florida. (Attachments: # 1 Exhibit)(BSN) (Entered: 10/25/2012)
10/24/2012	2	<input type="checkbox"/> 1.33MB	COMPLAINT against City of St. Petersburg, Florida, Misty Swanson with Jury Demand filed by Lauren Rachel Glass, Roy L. Glass. Originally filed in state court on 10/5/12. (Attachments: # 1 Exhibit)(BSN) (Entered: 10/25/2012)
10/25/2012	3	<input type="checkbox"/> 88.36KB	NOTICE by City of St. Petersburg, Florida <i>and MISTY SWANSON</i> (Patner, Joseph) (Entered: 10/25/2012)
10/25/2012	4	<input type="checkbox"/> 151.19KB	NOTICE by Roy L. Glass re 1 Notice of removal <i>Of Intent To File Motion To Remand</i> (Glass, Roy) (Entered: 10/25/2012)
10/25/2012	5	<input type="checkbox"/> 359.36KB	RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Notice of pendency of other actions due by 11/8/2012. Signed by Judge Richard A. Lazzara on 10/25/2012. (MSS) (Entered: 10/25/2012)
10/25/2012	6	<input type="checkbox"/> 26.32KB	NOTICE of pendency of related cases re 5 Related case order and notice of designation of track 2 per Local Rule 1.04(d) by City of St. Petersburg, Florida. Related case(s): no (Patner, Joseph) (Entered: 10/25/2012)
10/25/2012	7	<input type="checkbox"/> 60.55KB	CERTIFICATE of interested persons and corporate disclosure statement re 5 Related case order and notice of designation of track 2 by City of St. Petersburg, Florida identifying Corporate Parent City of St. Petersburg for City of St. Petersburg, Florida.. (Patner, Joseph) (Entered: 10/25/2012)
10/30/2012	8	<input type="checkbox"/> 6.31MB	MOTION to dismiss Complaint <i>or in the Alternative</i> , MOTION for summary judgment by All Defendants. (Attachments: # 1 Exhibit Affidavit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit)(Patner, Joseph) (Entered: 10/30/2012)
10/30/2012	9	<input type="checkbox"/> 10.11KB	ORDER denying without prejudice as moot 8 Motion to dismiss; denying without prejudice as moot 8 Motion for summary judgment. Plaintiffs to replead their Complaint as directed. Defendants shall have 15 days after service to file their responses. Signed by Judge Richard A. Lazzara on 10/30/2012. (SKH) (Entered: 10/30/2012)
11/15/2012	10	<input type="checkbox"/> 0.63MB	MOTION for reconsideration <i>and Motion for Order of Voluntary Dismissal of Count V</i> by Lauren Rachel Glass, Roy L. Glass. (Glass, Roy) (Entered: 11/15/2012)
11/15/2012	11	<input type="checkbox"/> 8.26KB	ORDER directing Defendants to respond to 10 Motion for Reconsideration and Motion for Order of Voluntary Dismissal of Count V. Expedited response due

			by 11/23/2012. Signed by Judge Richard A. Lazzara on 11/15/2012. (SKH) (Entered: 11/15/2012)
11/19/2012	12	<input type="checkbox"/> 88.95KB	RESPONSE to motion re 10 MOTION for reconsideration <i>and Motion for Order of Voluntary Dismissal of Count V</i> filed by City of St. Petersburg, Florida, Misty Swanson. (Patner, Joseph) (Entered: 11/19/2012)
11/19/2012	13	<input type="checkbox"/> 1.50MB	MOTION to Remand to State Court by All Plaintiffs. (Glass, Roy) (Entered: 11/19/2012)
11/20/2012	14	<input type="checkbox"/> 44.27KB	ORDER ATTACHED denying 10 Motion for Order of Voluntary Dismissal of Count V and denying without prejudice as moot 13 Motion to Remand to State Court. Any renewed motion for remand must be filed no later than 11/23/2012. Signed by Judge Richard A. Lazzara on 11/20/2012. (CCB) (Entered: 11/20/2012)
11/21/2012	15	<input type="checkbox"/> 0.57MB	**TERMED** AMENDED COMPLAINT <i>REPLEAD COMPLAINT</i> against All Defendants with Jury Demand filed by All Plaintiffs. Related document: 2 Complaint filed by Lauren Rachel Glass, Roy L. Glass.(Glass, Roy) Modified on 11/23/2012 - CALLED COUNSEL SHOULD BE OUR COURT HEADING (SAH). (Entered: 11/21/2012)
11/21/2012	16	<input type="checkbox"/> 226.13KB	Amended MOTION to Remand to State Court <i>Renewed</i> by All Plaintiffs. (Glass, Roy) (Entered: 11/21/2012)
11/23/2012	17	<input type="checkbox"/> 0.59MB	AMENDED COMPLAINT & <i>REPLEAD & RESTYLED COMPLAINT</i> against All Defendants with Jury Demand filed by All Plaintiffs. Related document: 2 Complaint filed by Lauren Rachel Glass, Roy L. Glass, 15 Amended complaint filed by Lauren Rachel Glass, Roy L. Glass.(Glass, Roy) (Entered: 11/23/2012)
11/27/2012	18	<input type="checkbox"/> 46.75KB	MOTION to dismiss Amended Complaint <i>or in the alternative</i> , MOTION for summary judgment by All Defendants. (Patner, Joseph) (Entered: 11/27/2012)
11/27/2012	19	<input type="checkbox"/> 10.41KB	RESPONSE to motion re 16 Amended MOTION to Remand to State Court <i>Renewed</i> filed by City of St. Petersburg, Florida. (Patner, Joseph) (Entered: 11/27/2012)
11/28/2012	20	<input type="checkbox"/> 13.85KB	ORDER ATTACHED granting 16 Motion to Remand to State Court. The clerk is directed to remand this case to the Circuit Court of Pinellas County, Florida, to CLOSE the case following remand, and to terminate any pending motions. The Court will defer ruling on Defendants' pending motion to dismiss or alternative motion for summary judgment to the state court after remand. Signed by Judge Richard A. Lazzara on 11/28/2012. (SKH) (Entered: 11/28/2012)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

vs.

Case No.

CITY OF SAINT PETERSBURG, FLORIDA,
A Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
severally,

Defendants.

_____ /

NOTICE OF REMOVAL

The Defendants, City of St. Petersburg and Misty Swanson, by filing this notice of removal, remove this action from the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida, to the United States District Court of the Middle District of Florida.

The Defendant states:

1. On October 5, 2012, the above-entitled civil action was commenced against the removing parties in the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, Case No. 12-12047-CI-19 (UCN: 522012CA012047XXCICI) and is now pending therein.

2. Removing parties were served with a summons and a copy of the complaint on October 17, 2012.

3. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 4.02(a), M.D. Fla. Rules, true and legible copies of all process, pleadings, orders, and other papers or exhibits of every kind, are attached as Composite Exhibit "A" to the original of this Notice of Removal.

4. The Plaintiff's Complaint asserts a federal claim for violation of Plaintiff's federal constitutional rights under Title 42, § 1983 and § 1988, United States Code, in that the allegations contained in the Complaint invoke the provisions of and seek relief under those federal statutes.

5. This Court has original jurisdiction over this cause pursuant to 28 U.S.C. § 1331 with respect to the 42 U.S.C. § 1983 and § 1988 claims which seek redress for alleged violation of rights secured by the U.S. Constitution, and the entire case can be removed under 28 U.S.C. § 1367 as any additional state law claims are so related to the § 1983 and § 1988 claims that they form the same controversy.

6. All known, served defendants join in and consent to this removal.

7. This notice is filed with this Court within 30 days after the initial service of the Complaint on the removing party, City of St. Petersburg, and by reason of the above, Defendant, City of St. Petersburg, is entitled to remove this action to this Court.

WHEREFORE, removing party, City of St. Petersburg prays that the above entitled action be removed from Pinellas County Circuit Court to this Court.

Dated this ____ day of October, 2012.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail and E-Mail to Roy L. Glass, Esquire, 5501 Central Avenue, St. Petersburg, FL 33710, lroyglass@tampabay.rr.com, this 24 day of October, 2012.

JOHN C. WOLFE
CITY ATTORNEY

By:

JOSEPH P. PATNER
Assistant City Attorney for St. Petersburg
and Misty Swanson
P.O. Box 2842
St. Petersburg, FL 33731
(727) 893-7401, FAX (727) 892-5262
FBN 831557
Joseph.Patner@stpete.org

CIRCUIT COURT, PINELLAS COUNTY, FLORIDA
CIVIL DIVISION
CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075. (See instructions for completion.)

I. CASE STYLE

Plaintiff LAUREN R. GLASS
Roy L. GLASS
 vs.
 Defendant CITY OF ST. PETE
MISTY SWANSON

Case #: 12-1208700

Judge: _____

FILED
 ST. PETERSBURG BRANCH
 2012 OCT -5 PM 1:51
 KEN BURKE
 CLERK OF CIRCUIT COURT

II. TYPE OF CASE

(If the case fits more than one type of case, select the most definitive category.)

If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- | | |
|---|--|
| <input type="checkbox"/> Condominium
<input type="checkbox"/> Contracts and indebtedness
<input type="checkbox"/> Eminent domain
<input type="checkbox"/> Auto negligence
<input type="checkbox"/> Negligence—other <ul style="list-style-type: none"> <input type="checkbox"/> Business governance <input type="checkbox"/> Business torts <input type="checkbox"/> Environmental/Toxic tort <input type="checkbox"/> Third party indemnification <input type="checkbox"/> Construction defect <input type="checkbox"/> Mass tort <input type="checkbox"/> Negligent security <input type="checkbox"/> Nursing home negligence <input type="checkbox"/> Premises liability—commercial <input type="checkbox"/> Premises liability—residential <input type="checkbox"/> Products liability
<input type="checkbox"/> Real property/Mortgage foreclosure <ul style="list-style-type: none"> <input type="checkbox"/> Commercial foreclosure \$0 - \$50,000 <input type="checkbox"/> Commercial foreclosure \$50,001 - \$249,999 <input type="checkbox"/> Commercial foreclosure \$250,000 or more <input type="checkbox"/> Homestead residential foreclosure \$0 - \$50,000 <input type="checkbox"/> Homestead residential foreclosure \$50,001 - \$249,999 <input type="checkbox"/> Homestead residential foreclosure \$250,000 or more <input type="checkbox"/> Non-homestead residential foreclosure \$0 - \$50,000 <input type="checkbox"/> Non-homestead residential foreclosure \$50,001 - \$249,999 <input type="checkbox"/> Non-homestead residential foreclosure \$250,000 or more <input type="checkbox"/> Other real property actions \$0 - \$50,000 <input type="checkbox"/> Other real property actions \$50,001 - \$249,999 | <input type="checkbox"/> Other real property actions \$250,000 or more
<input type="checkbox"/> Professional malpractice <ul style="list-style-type: none"> <input type="checkbox"/> Malpractice—business <input type="checkbox"/> Malpractice—medical <input type="checkbox"/> Malpractice—other professional <input checked="" type="checkbox"/> Other <u>CIVIL RIGHTS</u> <ul style="list-style-type: none"> <input type="checkbox"/> Antitrust/Trade regulation <input type="checkbox"/> Business transactions <input type="checkbox"/> Constitutional challenge—statute or ordinance <input type="checkbox"/> Constitutional challenge—proposed amendment <input type="checkbox"/> Corporate trusts <input type="checkbox"/> Discrimination—employment or other <input type="checkbox"/> Insurance claims <input type="checkbox"/> Intellectual property <input type="checkbox"/> Libel/Slander <input type="checkbox"/> Shareholder derivative action <input type="checkbox"/> Securities litigation <input type="checkbox"/> Trade secrets <input type="checkbox"/> Trust litigation |
|---|--|

III. REMEDIES SOUGHT (check all that apply):

- ☒ monetary;
☒ nonmonetary declaratory or injunctive relief;
☒ punitive

IV. NUMBER OF CAUSES OF ACTION: [5]

(specify) ~~I - TRESPASS TO CHATTEL; II - CONVERSION; III - ANIMAL CRUELTY; IV - INT'L INFLICTION; V - § 1983 ACTION~~

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- ☒ yes
☐ no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- ☒ no
☐ yes If "yes," list all related cases by name, case number, and court.

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- ☒ yes
☐ no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature [Signature]
Attorney or party

Fla. Bar # 210781
(Bar # if attorney)

(type or print name) ROGER L. GLASS

10-2-12
Date

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LAUREN RACHEL GLASS and ROY L. GLASS

(b) County of Residence of First Listed Plaintiff Pinellas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Roy L. Glass, Esquire
5501 Central Avenue
St. Petersburg, FL 33710 (727) 384-8888

DEFENDANTS

CITY OF ST. PETERSBURG, FLORIDA, a Municipal Corporation and St. Petersburg Police Officer MISTY SWANSON, jointly and severally,

County of Residence of First Listed Defendant Pinellas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Joseph P. Patner, Assistant City Attorney
P.O. Box 2842
St. Petersburg, FL 33731 (727) 893-7401

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government-Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC Sec. 1983

Brief description of cause:

Claim of 4th and 14th Amendment Violation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

15,000+

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

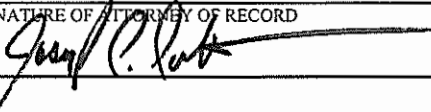
JUDGE

DOCKET NUMBER

DATE

10/25/12

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA

CASE NO. 12-12047C-019

**LAUREN RACHEL GLASS and
ROY L. GLASS**

Plaintiffs,

v.

**CITY OF SAINT PETERSBURG, FLORIDA,
A Florida Municipal Corporation, and
Saint Petersburg Police Officer, MISTY SWANSON,
jointly and severally,**

Defendants.

FILED
ST. PETERSBURG BRANCH
2012 OCT -5 PM 1:50
KEN BURKE
CLERK OF CIRCUIT COURT

**COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs, **LAUREN RACHEL GLASS and ROY L. GLASS**, sue, **CITY OF SAINT PETERSBURG, FLORIDA and MISTY SWANSON**, jointly and severally, and say:

NATURE OF ACTION

1. This is an action for damages within the jurisdiction of this Court in excess of fifteen thousand dollars (\$15,000.00) exclusive of interest, costs, and attorney fees.

2. Plaintiffs bring this action for claims of trespass to chattel, conversion, animal cruelty in violation of Fla. Stat. Section 828.12, civil rights section 1983 claim, and intentional or reckless infliction of emotional distress by Defendant, SWANSON, who acted in complete disregard for the Plaintiffs' rights when

SWANSON intentionally, unjustifiably, and senselessly shot and killed the Plaintiffs' twelve (12) year old Golden Retriever, "BOOMER," on October 2, 2011.

PARTIES, JURISDICTION, AND VENUE

3. At all times material hereto, Plaintiffs, **LAUREN RACHEL GLASS** and **ROY L. GLASS**, their children, and BOOMER were residents of the City of Saint Petersburg, Pinellas County, Florida.

4. Upon information and belief, Defendant, **MISTY SWANSON**, (hereinafter, "**SWANSON**,") is, and at all times material hereto was, a resident of Pinellas County, Florida.

5. Jurisdiction is proper in this Court pursuant to Section 26.012, Fla. Stat., and 42 U.S.C Sec. 1983.

6. Venue is proper in that the events that form the basis for the causes of action occurred in the City of Saint Petersburg, Pinellas County, Florida.

7. Now deceased, approximately twelve (12) year old male, AKC registered Golden Retriever, BOOMER, is, and all times relevant herein, was, regarded by the Plaintiffs and their family as their sentient personality, and immediate family member. Photos of Boomer are attached hereto as an Exhibit.

8. The City of Saint Petersburg, Florida, is a municipal corporation organized under the laws of the State of Florida, including, for the purposes of liability under 42 U.S.C. Sec. 1983. It operates the Saint Petersburg Police Department, the entity for which **SWANSON** worked as a police officer during the incident complained of.

9. Defendant, **SWANSON**, is, and at all germane times was, an employee and agent of the City of Saint Petersburg Police Department acting within the scope of her employment for purposes of state law, and under color of state law, for purposes of federal law. She is being sued in her personal and official capacities.

10. Plaintiffs' claim attorney's fees and costs as authorized by, inter alia, 42 U.S.C. Sec. 1988, and grounds of equity. No administrative claim filing or other pre-litigation requirements apply to their claims against the City of Saint Petersburg under 42 U.S.C. Sec. 1983, nor for such claims against **SWANSON**.

11. On or about November 21, 2011, the City of Saint Petersburg was served with a Notice of Claim pursuant to Section 768.26(6) Fla. Stat. More than six (6) months have elapsed since Notice was provided to the city, and all state imposed conditions precedent have either been performed or satisfied.

GENERAL ALLEGATIONS¹
(The Human-Animal Bond)

12. The human-animal bond presents a fundamental property and/or liberty interest protected under the state and federal constitutions.

13. The American Veterinary Medical Association summarized the findings from a 2006 survey of 50,000 companion animal guardians, which revealed that "[most] people consider their pets to be family members or companions, not property. ... The statistics reveal that almost all pet owners feel a

¹ It is with much gratitude that the information in paragraphs 12-24 was graciously provided by Adam P. Karp, Esquire, of Bellingham, Washington.

strong human-animal bond.” *Human-Animal Bond Boosts Spending on Veterinary Care*, JAVMA News, Jan. 1, 2008, <http://www.avma.org/onlnews/javma/jan08/080101a.asp>. According to the survey, 49.7 percent of guardians viewed their companion animals as “family,” while another 48.2 percent considered them “companions.” *Id.* Only 2.1 percent of those surveyed viewed their companion animals as property. *Id.* This change in attitude has developed over the last 30 years, evidencing a major shift in the public’s attitude toward companion animals. *Id.* There are over 150 million cats and dogs in this country living with humans in homes - one for every two Americans. *Id.*; see also William C. Root, “*Man’s Best Friend::Property or Family Member? An examination of the Legal Classification of Companion animals and its Impact on Damages Recoverable for their Wrongful Death or Injury*,” 47 Vill. L. Rev. 423, 423 (2002).

14. Recent studies show that 45 percent of dog owners take their dogs on vacation: more than half the companion animal owners would prefer a dog or a cat to a human if they were stranded on a deserted island; and 50 percent of companion animal owners would be “very likely” to risk their lives to save their companion animals, while another 33 percent would be “somewhat likely” to put their own lives in danger to save their companion animals. *Id.* In addition to the personal value of companionship that animals offer, studies over the last two decades have confirmed the health benefits derived from human-animal companion relationships.

15. In 1975, the National Institutes of Health commissioned research entitled "The Human Health Responsibilities of Veterinarians," which was the first official recognition of the triangular interrelationships among people, their veterinarians, and their pets (www.argusinstitute.colostate.edu/history.htm).

16. In 1999, three organizations (the American Veterinary Medical Association, the American Association of Animal Hospitals, and the Association of American Veterinary Medical Colleges) commissioned an economic study, a significant portion of which addressed the human-animal bond in depth. The study concluded that, "in veterinary practice, recognition of the human-animal bond is an important determinant of successful practice" (www.argusinstitute.colostate.edu/history.htm).

17. These above examples demonstrate that the bond between a companion animal and a human animal is real and capable of empirical study and analysis. In addition, the human-animal bond is recognized to have financial business implications as well as personal emotional influence.

18. Research goes further in the study of this bond. We might anticipate and expect that scientists involved in laboratory animal research remain emotionally distant from their subjects, if for no other reason than self-protection. However, the Institute for Laboratory Animal Research Journal in 2002 devoted an entire issue to the *Implications of Human-Animal Interactions and Bonds in the Laboratory*, ILAR Journal Vol. 43 (1) 2001. Kathryn Bayne, D.V.M., reports in her article, *Development of the Human-Research Animal Bond and its Impact on*

Animal Well-Being that the bond between animal and human is based on affection and/or respect:

In the research environment, it is not uncommon for a bond to develop between the investigator, veterinarian, and/or animal care technicians and the animals with which they work . . . Circumstances that foster the formation of these bonds include the close and frequent contact between the researchers and their animals, . . . the dependency of the animals on the animal care staff for their daily needs . . .

19. Dr. Bayne also notes that special bonds can form with certain animals. "A strong contributing factor to the development of a bond is commitment to the animal," in caring for the animal, recognizing the animal's individuality, training the animal, and talking to the animal (http://dels.nas.edu/ilar_n/ilarjournal/43_1/Development.shtml).

20. In fact, a 2001 American Animal Hospital Association survey reported that 44 percent of pet owners would spend \$3000 or more to save their pet's life, and 21 percent would travel 1000 miles or more to obtain specialty care for their pet. A Pfizer Animal Health/Gallup Organization Dog Owner survey reports that more than 75 percent of pet owners say that their dog's health is as important to them as their own (<http://www.wargusinstitute.colostate.edu/hab.htm>). These kinds of owner attitudes reflect that owners are willing to demonstrate behaviorally that they believe their relationship with their dog is one-of-a-kind.

21. This relationship between a companion animal and a human animal is bidirectional. Tannenbaum describes this as a relationship that benefits both

parties and is mutually voluntary (*The Health Benefits of Pets*. NIH Technology Assess Statement Online 1989 Sep 10-11). From the time a person brings an animal into his/her household, the two interact with and affect each other. The training that the person provides, caring for the dog's daily needs, taking the dog with her to work and on outings, talking with the dog - all serve to strengthen the bond bidirectionally. The more attention an owner gives to a dog, the more likely that dog is to communicate behaviorally in response. This two-way interaction will mold itself into a personalized, unique relationship, and the relationship has the potential to grow with each communication.

22. As the bond is strengthened, so is the potential for significant grief when that bond is broken. "During a person's experience with a companion animal, the depth of attachment grows, deepening the experience of loss when the animal dies" (*Grief Following Death of a Companion Animal*, by Messam, Zasloff, Mader-Weidne, Hendrie, & Hart, <http://the-digital-library.com/purdue.pdf>). Grief after pet loss is not as openly acknowledged as grief after the death of a human companion. As a result, the grieving person may receive inadequate support in their grieving and may feel isolated, which can increase the recovery period. *Id.* A study performed by the University of California, Davis School of Veterinary Medicine, and published in 2005, reports that in highly attached care givers, 50 percent were still grieving after one year. *Id.*

23. There is a wealth of popular books available on the topic of pet loss. In addition, the Association for Death Education and Counseling (ADEC), the National Hospice and Palliative Care Organization (NHPCO), and the Hospice Foundation of America (organizations designed to provide care for humans) all recognize pet loss as a valid form of grief, yet it is still considered disenfranchised grief. In fact, the entire April 2007 issue of ADEC's *The Forum* was dedicated to pet loss. The Association for Pet Loss and Bereavement provides not only supportive information, but also a referral list of counselors who provide pet loss counseling.

24. The above allegations are illustrative only of the empirically and methodologically demonstrable human-animal bond. More recent and ongoing scientific evidence amplifies and further develops these tenets of long-standing scientific acceptance.

KILLING OF BOOMER

25. On Sunday, October 2, 2011, BOOMER allegedly attempted to mount a neighbor's dog during a walk and then after they went inside BOOMER stayed on the neighbor's porch and would not leave.

26. When the neighbor attempted to check BOOMER's tags to see whom he belonged to, he reportedly snapped at her.

27. It was between midnight on October 1, 2011 and 2:00 a.m. on October 2, 2011, while Plaintiffs were asleep, that **SWANSON** attempted to have

BOOMER get in the back of her patrol car by giving him jerky. At this time BOOMER was reportedly friendly and cooperative.

28. Thereafter, when BOOMER gladly accepted the jerky, but refused to get into the back of **SWANSON's** police car, **SWANSON** grabbed his collar and BOOMER reportedly barred his teeth and started growling at her.

29. Before Officer **SWANSON** confronted BOOMER, she and a fellow officer, FOTOVAT, directed the complaining neighbor to go inside. Consequently, there were no independent witnesses to the killing of BOOMER except for those who heard the gunshot.

30. Then, in what can only be described as totally bizarre and inconsistent with his breed and temperament, BOOMER reportedly continued to come towards **SWANSON**, growling and snapping, and ultimately lunging and jumping toward her face, at which time she pulled out her firearm and shot BOOMER in the chest.

31. After being shot, BOOMER cried loudly for up to 20 minutes until he bled out. A photograph of BOOMER's body is attached as an Exhibit.

32. The SPCA was contacted to pick up BOOMER's body, and reportedly arrived just after BOOMER died.

33. At no time did **SWANSON** attempt to use less-than-lethal or non-lethal force on Boomer, such as a taser, baton, or OC spray, nor at any time prior

to the shooting did she speak to, or attempt to solicit assistance from the SPCA or animal control in containing BOOMER.

34. Prior to BOOMER's shooting, neither **SWANSON**, nor any other SPPD officer or employee knew any information, if any, whether from animal control or law enforcement records, word of mouth, personal observation, or elsewhere, about BOOMER other than the complaining neighbor warning them about BOOMER not wanting someone to grab his collar.

35. On the date **SWANSON** killed BOOMER, BOOMER never injured or harmed **SWANSON**; never bit, injured, chased, or aggressively approached in a menacing fashion or apparent attitude of attack, and never bit or injured any other animal.

36. Later, in the morning of October 2, 2011, upon arising, Plaintiffs discovered that BOOMER had gotten out of the yard. Plaintiff, **ROY L. GLASS**, searched the neighborhood looking for BOOMER. Calls were placed to the SPCA and Humane Society in an effort to locate BOOMER, but proved to be non-productive. It was not until days later that Plaintiff, **ROY L. GLASS**, was contacted by the SPCA and learned that the SPPD had shot and killed BOOMER.

37. During the five-year-period (5) prior to BOOMER's killing, there were approximately twenty-five (25) animal shootings by the SPPD; seven (7) just in the year 2011 alone.

38. Upon information and belief, all such prior shootings did not result in any discipline of the SPPD officers or their agents.

39. Following the killing of Boomer, **SWANSON** faced no discipline from the SPPD, the shooting board predictably finding that the killing was "justified." Upon information and belief, prior animal shootings by the SPPD were also classified as "justified" and the involved officers faced no discipline from the SPPD, showing ratification by the City of Saint Petersburg of **SWANSON's** behavior.

40. The SPPD policy and/or custom on shooting animals, effective at the time of BOOMER's killing, authorized officers to elect to deploy lethal force and kill dogs within the officer's exclusive and unbridled discretion once deemed subjectively by the officer "to kill a...dangerous animal if it poses an imminent threat of death or great bodily harm to a person, when other means are impractical, and then only with authorization from the supervisor, if time permits." Indeed, non-deadly force and the use of less lethal weapons were to be employed "to deter an attack by an animal upon themselves or another person."

41. Effective at the time of BOOMER's death, the City of Saint Petersburg's policy and/or custom on shooting animals authorized officer's to use lethal force and to kill dogs within the officer's exclusive and unbridled discretion once deemed subjectively by the officer as "vicious" or "dangerous" without defining either what constitutes "vicious" or "dangerous" and without setting forth

any bounds in respect to constitutional limits and the proper use of force to be used in dealing with one's household pet, a loved member of the family.

42. Further, the City failed to train **SWANSON** in the Constitutional limits on the use of force against domestic animals and pets given the previously alleged prevalence and foreseeability of officer's encountering canines, the need for more or different training was so obvious the constitutional violations would likely result as to render the City of Saint Petersburg liable for BOOMER's death and Plaintiffs' concomitant constitutional injuries. Indeed, serving as further ratification for Officer **SWANSON's** killing of Boomer, the Chief of Police, required further and additional training in the use of force against animals, yet, as of October 31, 2011, Officer **SWANSON** had not received such animal training.

43. The Plaintiffs lost the intrinsic value of BOOMER, as based on his unique qualities, characteristics, behaviors, personality, training, and bond, as well as the loss of his utility, companionship, love, affection, protection, and solace. At the time of his death, BOOMER had no fair market value and could not be replaced or reproduced. Plaintiffs, and any reasonable person in their position, would not willingly have sold BOOMER at the time just prior to his death. At that moment, and thereafter, BOOMER had an immense intrinsic value to the Plaintiffs.

44. Boomer was a close family companion and had a special value, aiding Plaintiffs in their enjoyment of life, well-being, growth, development, and daily activities with family and friends.

45. Plaintiffs experienced emotional distress from the acts and omissions identified herein. Plaintiffs suffered, grief, and emotional distress to include observing the negative, deleterious impact the offense had on the children.

COUNT I
(Trespass to Boomer)

46. Plaintiffs repeat and reallege each and every allegation as if fully set forth herein.

47. At all times material hereto, Plaintiffs were the owners and possessors of BOOMER. Plaintiffs had possession of BOOMER since he was whelped. BOOMER was a good natured companion dog and family pet.

48. At the time of BOOMER's death, he was Plaintiffs' companion. BOOMER was a family pet, known and enjoyed by them, and therefore irreplaceable in like and kind.

49. While Plaintiffs were sleeping in their home, less than a block away, **SWANSON** willfully, maliciously, needlessly, unjustifiably, in disregard for humanity for both the law and the property rights of private citizens, including the Plaintiffs, shot and killed BOOMER.

50. As a result of the foregoing, Plaintiffs have been and will continue to be damaged by the aforementioned actions. Plaintiffs are deprived of possession, use, enjoyment, protection, and companionship of their family dog, BOOMER, constituting a trespass ro chattel.

51. A trespass to chattel (BOOMER) was done without proper legal authority or justification. There was no need for the application of lethal force because BOOMER was neither "vicious" nor "dangerous," and did not present a serious safety concern to the neighborhood.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT II
(Conversion of Boomer)

52. Plaintiffs repeat and reallege every allegation as if fully set forth herein.

53. By shooting Plaintiffs' dog, and taking his life, Defendant, **SWANSON**, exercised dominion over Plaintiffs property and interference with Plaintiffs' rights. **SWANSON's** acts constitute a conversion of Plaintiffs' property for which Plaintiffs are entitled to just compensation.

54. Defendant, **SWANSON**, permanently deprived Plaintiffs of their property and unlawfully interfered with their benefits they did, and could have gained from their loss of possession and ownership of BOOMER.

55. As a direct and proximate result of **SWANSON's** actions, Plaintiffs have in the past suffered, and will continue to suffer damages, including, but not limited to grief, mental anguish, emotional distress, and loss of companionship and protection.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT III
(Animal Cruelty in Violation of Fla. Stat. Section 828.12)

56. Plaintiffs repeat and reallege every allegation as if fully set forth herein.

57. The killing of BOOMER was done intentionally and willfully.

58. Defendant **SWANSON's** action was an intentional wrongful act without legal justification and was done in reckless disregard of the Plaintiffs' rights, and therefore in violation of Section 828.12, Fla. Stat.

59. By reason of the foregoing and as a direct and proximate result thereof, Plaintiffs have suffered damages as previously set forth herein.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT IV
(Intention and Reckless Infliction of Emotional Distress)

60. Plaintiffs repeat and reallege every allegation as if fully set forth herein.

61. Defendant **SWANSON's** shooting and killing of BOOMER was without good cause, justification, or necessity.

62. Defendant **SWANSON's** actions were intentional and outrageous, and in complete disregard for the Plaintiffs' rights.

63. Defendant **SWANSON** knew, or should have known, that her actions would result in severe emotional distress to the Plaintiffs.

64. As a direct and proximate result of Defendant **SWANSON's** actions, Plaintiffs have in the past suffered, and will continue to suffer damages, including but not limited to mental anguish, emotional distress, and loss of protection and companionship of BOOMER.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT V
(Claims for Relief against Swanson and the City of Saint Petersburg)

65. Plaintiffs repeat and reallege Paragraphs 1-46, 48-49, 54-55, 58-59, 62-64, as if fully set forth herein.

66. Defendant, the **CITY OF SAINT PETERSBURG**, is liable to Plaintiffs in violation of federal constitutional guarantees (42 U.S.C Sec.1983) as to Defendant, **SWANSON**, whose actions were taken under color of law, violating clearly established rights of which a person would have been aware at the time those actions of omission and commission were taken by her. **SWANSON**

unlawfully and unconstitutionally seized Plaintiffs' personality, to wit, BOOMER, in violation of the 4th and 14th Amendments to the United States Constitution.

67. Defendant, **CITY OF SAINT PETERSBURG**, is also liable to Plaintiffs for violation of federal constitutional guarantees (42 U.S.C. Sec. 1983) based on its policy and custom as previously stated.

68. Defendant, **CITY OF SAINT PETERSBURG**, is liable to Plaintiffs for violation of federal constitutional guarantees (42 U.S.C. Sec. 1983) for failure to adequately train and equip its police force, nor training its officers with respect to the handling of deadly force and animals in its reckless or grossly negligent manner so that future police misconduct is almost inevitable, and the damages to the Plaintiffs were therefore the result of a deliberate and conscious indifference by the City. Specifically, no "scenarios" to consider involving animals and the potential use of firearms was adopted until after the killing of BOOMER, nor were officers directed to contact Animal Control when dogs or other domestic animals are encountered; nor did the **CITY OF SAINT PETERSBURG** equip officers with sufficient non-lethal animal restraints that more likely than not, had the training (such as recognizing basic animal body language and the use of tasers, batons, pepper spray, snares, and the officers own body posturing as a means to avoid the use of deadly force been administered and the equipment dispensed, would have avoided the shooting and death of BOOMER, and other citizens' companion pets.

WHEREFORE, Plaintiffs pray for judgment against Defendants,
SWANSON and the **CITY OF SAINT PETERSBURG**, as follows:

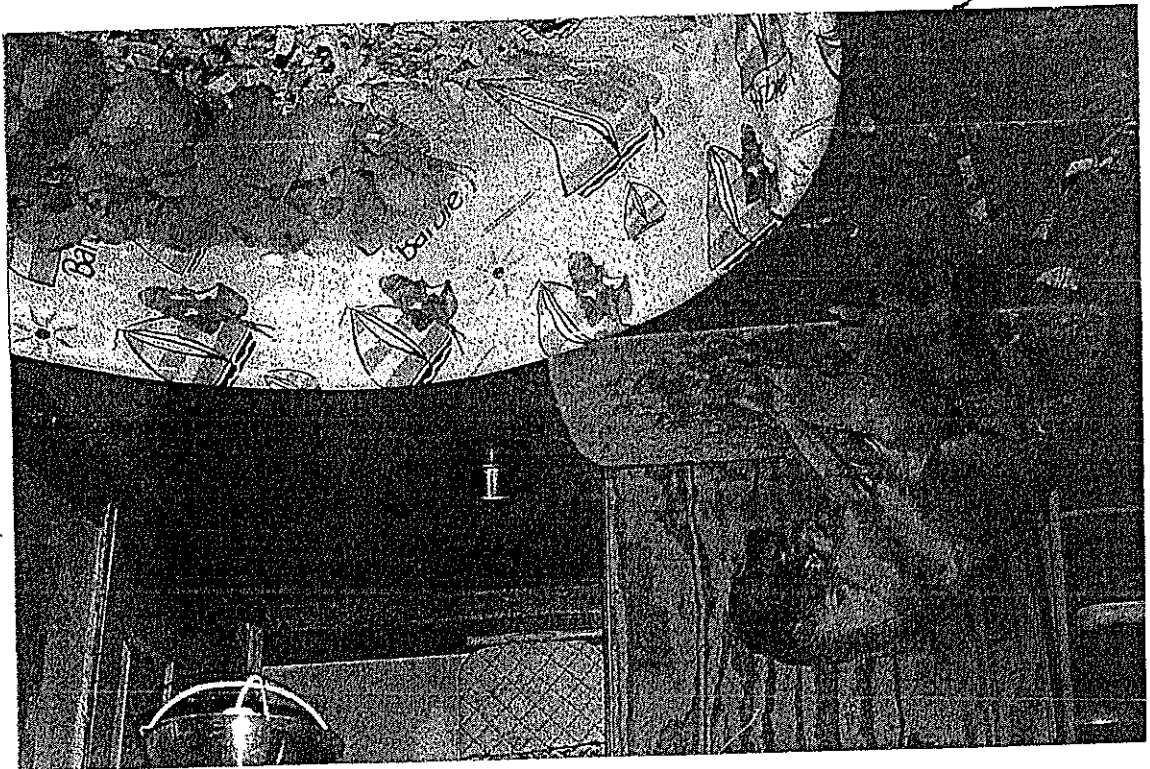
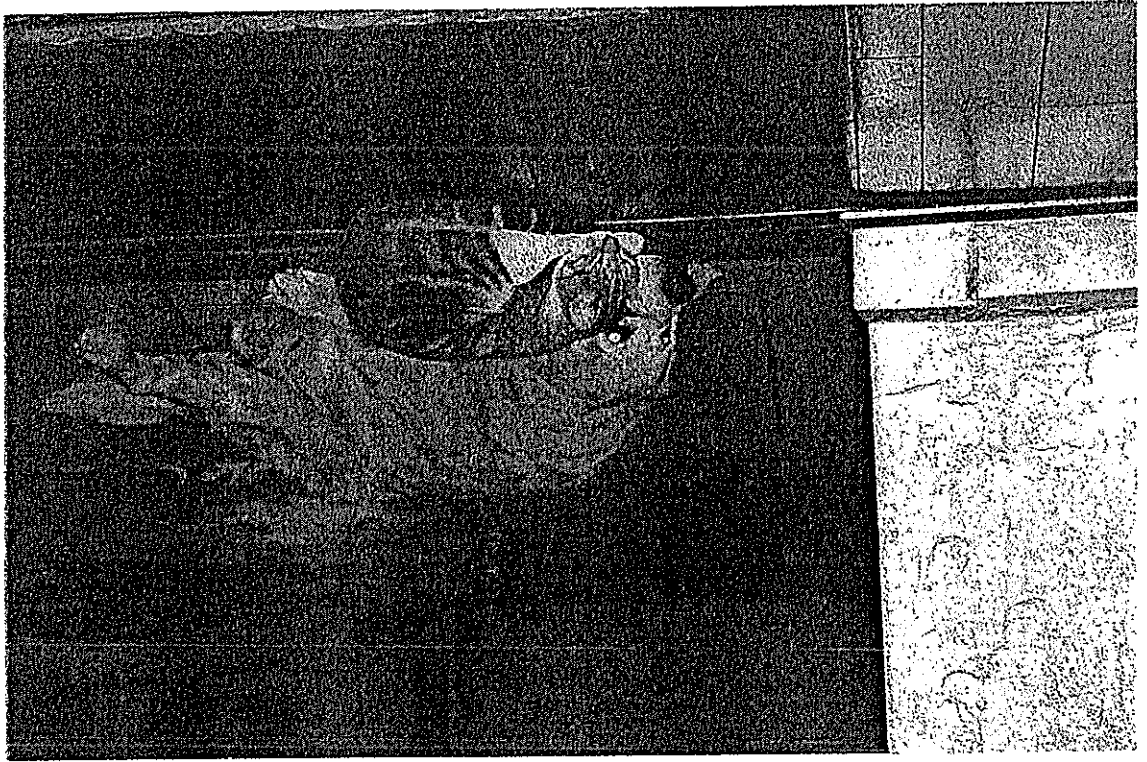
- A) For economic damages, representing the intrinsic value and loss of use of BOOMER;
- B) For special and general damages relating to the loss of BOOMER's utility;
- C) Non-economic damages, including grief, emotional distress and loss of enjoyment of life;
- D) Punitive damages against **SWANSON**;
- E) Reasonable attorney's fees and other litigation-related costs as allowed by law under 42 U.S.C. Sec. 1988; or, in the alternative, statutory attorney's fees;
- F) Post judgment interest at the highest rate permitted by law;
- G) For such other and further relief as the Court may deem just and proper, and for a trial by jury of all claims triable as a matter of right by a jury.

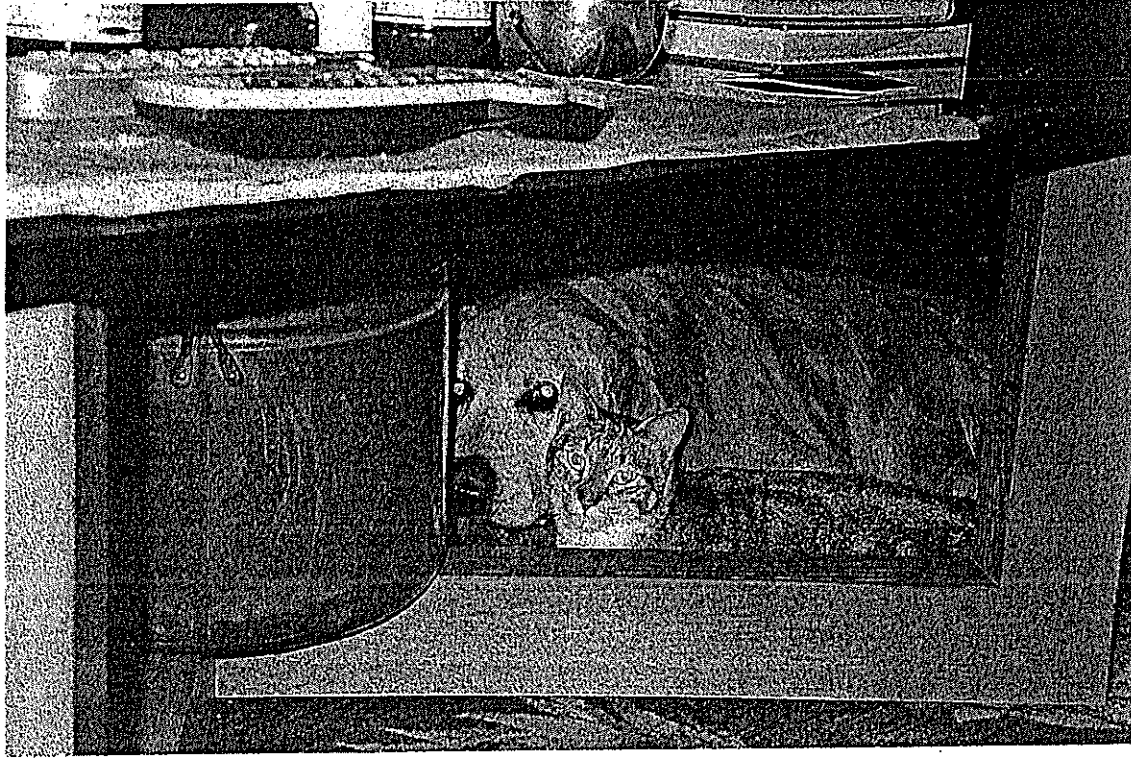
DATED this 2nd day of October, 2012

LAW OFFICES OF ROY L. GLASS, P.A.



Roy L. Glass, Esquire
5501 Central Avenue
St. Petersburg, FL 33710
(727) 384-8888 (727) 345-3008 fax
Attorney for Plaintiffs
SPN: 192458 FBN: 210781
lroyglass@tampabay.rr.com







UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

vs.

Case No.8:12-cv-02405-RAL-TGW

CITY OF SAINT PETERSBURG, FLORIDA,
a Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
severally,

Defendants.

/

PLAINTIFFS' NOTICE OF INTENT TO FILE MOTION TO REMAND

Plaintiffs will file within thirty (30) days of the filing the Notice of Removal their Motion to Remand and Memorandum of Law.

I HEREBY CERTIFY that on October 25, 2012, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system. I further certify that a true and a correct copy of the foregoing has been furnished this day via email to:

(Joseph.Patner@stpete.org)
Joseph P. Patner, Esquire
Assistant City Attorney for Defendants
PO Box 2842
St. Petersburg, FL 33731
(P) 727-893-7401
(F) 727-892-5262

//s// Roy L. Glass
The Law Offices of Roy L. Glass, P.A.
5501 Central Ave.
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FBN: 210781
lroyglas@tampabay.rr.com

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LAUREN RACHEL GLASS, ROY L. GLASS,

Plaintiffs,

v.

Case No. 8:12-cv-2405-T-26TGW

**CITY OF SAINT PETERSBURG, FLORIDA,
MISTY SWANSON,**

Defendants.

_____ /

**RELATED CASE ORDER,
INTERESTED PERSONS ORDER,
ORDER REQUIRING ELECTRONIC FILING,
AND NOTICE OF TRACK DESIGNATION**

RELATED CASE ORDER: No later than **November 8, 2012**, counsel and any *pro se* party shall comply with Local Rule 1.04(d), and shall file and serve a certification as to whether the instant action should be designated as a similar or successive case pursuant to Local Rule 1.04(a) or (b). The parties shall utilize the attached form NOTICE OF PENDENCY OF OTHER ACTIONS.

INTERESTED PERSONS ORDER: This Court makes an active effort to screen every case in order to identify parties and interested corporations in which any assigned judge may be a shareholder, as well as for other matters that might require consideration of recusal.

Accordingly, no later than **November 8, 2012**, each party, *pro se* party, governmental party, intervenor, non-party movant, and Rule 69 garnishee **shall file and serve** a CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT utilizing the attached form.

No party may seek discovery from any source before filing and serving a CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT. A motion, memorandum,

response, or other paper — including emergency motion — may be denied or stricken unless the filing party has previously filed and served its CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT.

Each party has a continuing obligation to file and serve an amended CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT within eleven days of 1) discovering any ground for amendment, including notice of case reassignment to a different judicial officer; or 2) discovering any ground for recusal or disqualification of a judicial officer. A party should not routinely list an assigned district judge or magistrate judge as an “interested person” absent some non-judicial interest.

In order to assist the Court in determining when a conflict of interest may exist, particularly when ruling on matters formally assigned to another judge, each party shall use the full caption of the case — including the names of all parties and intervenors — on all motions, memoranda, papers, and proposed orders submitted to the Clerk. *See* Fed.R.Civ.P. 10(a); Local Rule 1.05(b) (“*et al.*” discouraged).

NOTICE OF TRACK TWO DESIGNATION In accordance with Local Rule 3.05, this action is designated a **Track Two** case. All parties must comply with the requirements established in Local Rule 3.05 for Track Two cases. Counsel and any unrepresented party shall meet within sixty days after service of the complaint upon any defendant for the purpose of preparing and filing a Case Management Report. The parties shall utilize the Case Management Report form located at the Court's website **www.flmd.uscourts.gov** under 'Judicial Information' and under assigned Judge Richard A. Lazzara, United States District Judge. Unless otherwise ordered by the Court, a party may not seek discovery from any source before the meeting. Fed. R. Civ. P. 26 (d); Local Rule 3.05(c)(2)(B).

ORDER REQUIRING ELECTRONIC FILING:

All attorneys appearing before

this court are **required** to register for CM/ECF docketing **within 15 days** of their entry of appearance in any action pending before this Court. Counsel are directed to the website located at www.flmd.uscourts.gov under “CM/ECF” where they **are to request their password** from the Court. **(NOTE: Pro Se parties are exempt from the electronic filing requirement.)**

DONE and ORDERED in Tampa, Florida on October 25, 2012.

RICHARD A. LAZZARA

Richard A. Lazzara [26]
United States District Judge

Attachments: Notice of Pendency of Other Actions [mandatory form]
Certificate of Interested Persons and Corporate Disclosure Statement
Magistrate Judge Consent / Letter to Counsel
Magistrate Judge Consent Form / Entire Case
Magistrate Judge Consent / Specified Motions

Web Case Management Form: www.flmd.uscourts.gov [mandatory form]

Copies to: All Counsel of Record
All *Pro Se* Parties

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LAUREN RACHEL GLASS, ROY L. GLASS,

Plaintiffs,

v.

Case No. 8:12-cv-2405-T-26TGW

**CITY OF SAINT PETERSBURG, FLORIDA,
MISTY SWANSON,**

Defendants.

_____ /

NOTICE OF PENDENCY OF OTHER ACTIONS

In accordance with Local Rule 1.04(c), I certify that the instant action:

_____ **IS** related to pending or closed civil or criminal case(s) previously filed in this Court, or any other Federal or State court, or administrative agency as indicated below:

_____ **IS NOT** related to any pending or closed civil or criminal case filed with this Court, or any other Federal or State court, or administrative agency.

I further certify that I will serve a copy of this NOTICE OF PENDENCY OF OTHER ACTIONS upon each party no later than eleven days after appearance of the party.

Dated:

Counsel of Record or *Pro Se* Party
[Address and Telephone]

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

I hereby disclose the following pursuant to this Court's interested persons order:

1.) the name of each person, attorney, association of persons, firm, law firm, partnership, and corporation that has or may have an interest in the outcome of this action — including subsidiaries, conglomerates, affiliates, parent corporations, publicly-traded companies that own 10% or more of a party's stock, and all other identifiable legal entities related to *any* party in the case:

[insert list]

2.) the name of every other entity whose publicly-traded stock, equity, or debt may be substantially affected by the outcome of the proceedings:

[insert list]

3.) the name of every other entity which is likely to be an active participant in the proceedings, including the debtor and members of the creditors' committee (or twenty largest unsecured creditors) in bankruptcy cases:

[insert list]

4.) the name of each victim (individual or corporate) of civil and criminal conduct alleged to be wrongful, including every person who may be entitled to restitution:

[insert list]

I hereby certify that, except as disclosed above, I am unaware of any actual or potential conflict of interest involving the district judge and magistrate judge assigned to this case, and will immediately notify the Court in writing on learning of any such conflict.

[Date]

[Counsel of Record or *Pro Se* Party]
[Address and Telephone]

[Certificate of Service]



**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

Dear Counsel:

Enclosed with this letter is a communication from the Clerk of this Court affording you the opportunity, with the approval of the U.S. District Judge, to consent to the reference of any part or all of the proceedings in this case to a U.S. Magistrate Judge, including reference for final disposition.

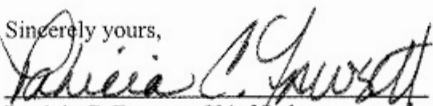
Careful consideration should be given to this option.

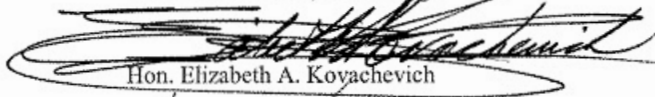
To assist the federal courts in coping with dramatically increased caseloads, Congress authorized the reference to a U.S. Magistrate Judge of any part or all of the proceedings in a civil case, both jury and non-jury, upon consent of all parties (28 U.S.C. § 636(c)). All of the U.S. District Judges in this District refer cases under this provision to our able and experienced U.S. Magistrate Judges who are almost always able to schedule early and firm trial dates in accordance with the needs of the parties.

Whether to consent to a reference to a U.S. Magistrate Judge is entirely up to you and your client. This case has not been specifically selected for this program; the Clerk sends out this notice in every civil case. If a party declines to consent to a reference, that fact is known only to the Clerk and not to any of the District or Magistrate Judges.

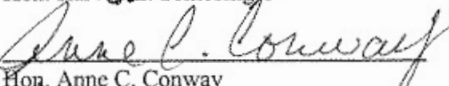
This program has proved to be of great benefit to counsel, client, and the Court.

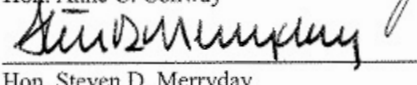
Sincerely yours,

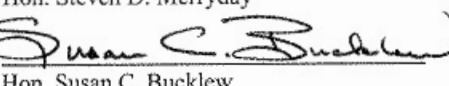

Patricia C. Fawcett, Chief Judge


Hon. Elizabeth A. Kovachevich

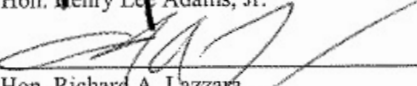

Hon. Harvey E. Schlesinger

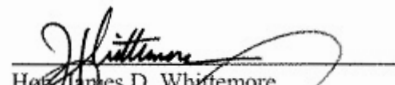

Hon. Anne C. Conway

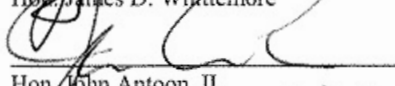

Hon. Steven D. Merryday

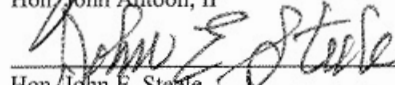

Hon. Susan C. Bucklew

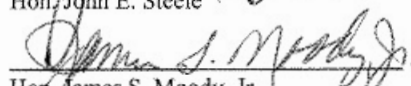

Hon. Henry Lee Adams, Jr.

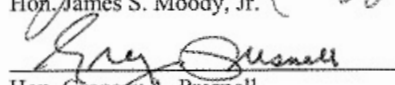

Hon. Richard A. Lazzara

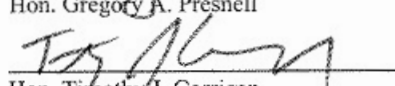

Hon. James D. Whittemore

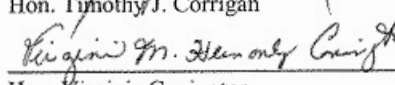

Hon. John Antoon, II


Hon. John E. Steele


Hon. James S. Moody, Jr.


Hon. Gregory A. Presnell


Hon. Timothy J. Corrigan


Hon. Virginia Covington

AO 85 (Rev. 8/98) Notice, Consent and Order of Reference — Exercise of Jurisdiction by a United States Magistrate Judge

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LAUREN RACHEL GLASS, ROY L. GLASS,

Plaintiffs,

v.

Case No. 8:12-cv-2405-T-26TGW

**CITY OF SAINT PETERSBURG, FLORIDA, MISTY
SWANSON,**

Defendants.

NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE TO EXERCISE JURISDICTION

In accordance with the provisions of 28 U.S.C. 636(c) and Fed. R. Civ. P. 73, you are hereby notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case, including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

CONSENT TO EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. 636(c), and Fed.R.Civ.P. 73, the parties in this case hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including, the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Signatures

Party Represented

Date

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to the UNITED STATES MAGISTRATE JUDGE for all further proceedings and the entry of judgment in accordance with 28 U.S.C. 636(c), Fed. R. Civ. P. 73 and the foregoing consent of the parties.

DATE

UNITED STATES DISTRICT JUDGE

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.

AO 85 (Rev. 8/98) Notice, Consent and Order of Reference — Exercise of Jurisdiction by a United States Magistrate Judge

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LAUREN RACHEL GLASS, ROY L. GLASS,

Plaintiffs,

v.

Case No. 8:12-cv-2405-T-26TGW

**CITY OF SAINT PETERSBURG, FLORIDA, MISTY
SWANSON,**

Defendants.

**CONSENT TO EXERCISE JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE
OVER DISPOSITIVE MOTIONS DESCRIBED UNDER 28 U.S.C. § 636(b)(1)(B)**

CONSENT TO EXERCISE OF JURISDICTION

In accordance with the provisions of 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States Magistrate Judge conduct any and all proceedings and enter a final order as to each motion identified below.

MOTION(S)

Party Represented

Signatures

Date

ORDER OF REFERENCE

IT IS ORDERED that the above motions(s) be referred to the United States Magistrate Judge assigned to this case to conduct all proceedings and enter a final order on such motions(s) in accordance with 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF COURT **ONLY IF ALL PARTIES HAVE CONSENTED ON THIS FORM** TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS, ROY L. GLASS,

Plaintiffs,

v.

Case No. 8:12-cv-2405-T-26TGW

CITY OF SAINT PETERSBURG, FLORIDA,
MISTY SWANSON,

Defendants.

_____ /

NOTICE OF PENDENCY OF OTHER ACTIONS

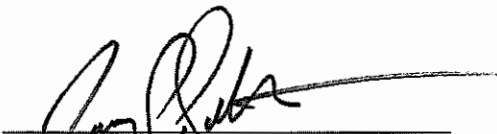
In accordance with Local Rule 1.04(c), I certify that the instant action:

_____ IS related to pending or closed civil or criminal case(s) previously filed in this Court, or any other Federal or State court, or administrative agency as indicated below:

☒ IS NOT related to any pending or closed civil or criminal case filed with this Court, or any other Federal or State court, or administrative agency.

I further certify that I will serve a copy of this NOTICE OF PENDENCY OF OTHER ACTIONS upon each party no later than eleven days after appearance of the party.

Dated: 10/25/12



Counsel of Record or *Pro Se* Party
/[Address and Telephone]

P.O. Box 2842
ST. Petersburg, FL 33731
(727) 893-7401

FBN 831557

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

vs.

Case No. 8:12-cv-02405-T-26TGW

CITY OF ST. PETERSBURG, FLORIDA
A Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
severally,

Defendants.

DEFENDANTS' CITY OF ST. PETERSBURG AND SWANSON DISPOSITIVE
MOTION TO DISMISS OR IN THE ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT AND MEMORANDUM OF LAW

The Defendants, City of St. Petersburg and Swanson, move for an Order dismissing the Complaint herein under FRCP 12(b)(6) for failure to state a claim upon which relief can be granted, or in the alternative, Defendants move for summary judgment and as grounds thereof the Defendants would state:

A. Officer Swanson – Qualified Immunity

1. The Defendant, St. Petersburg Police Officer Misty Swanson is entitled to qualified immunity for her actions. Officer Swanson acted reasonably, lawfully, and did not violate any known or clearly established laws or rights, when she defended herself by shooting an attacking 70 pound dog with a history of aggression, running loose, and a prior documented bite and subsequent quarantine.

2. Plaintiff has sued Officer Swanson individually, and seeks damages including punitive damages against her.

3. Plaintiff alleges in his Complaint that the dog “snapped” at a neighbor. Plaintiff Complaint, Doc. 2, par. 25.

4. Plaintiff further alleges that the dog “reportedly bared his teeth and started growling at her.” Plaintiff Complaint, Doc. 2, par. 28.

5. Officer Swanson had been called to the scene, along with Officer Fotovat, concerning an aggressive dog. Affidavit of Swanson, Exhibit 1.

6. In fact, a neighbor made two calls to the police, complaining about an “aggressive” dog each time. Exhibit 2, transcript of call.

7. Officer Swanson, an owner of two dogs herself, has had numerous contacts with dogs without having to resort to force. Affidavit of Swanson, par. 4.

8. Upon contact with the complained of aggressive dog, who was running loose in the neighborhood in violation of St. Petersburg City Code Sec. 4-55, Officer Swanson attempted to lure the dog into her cruiser with beef jerky and contain it. Animal Control Services will not respond to an uncontained or roaming dog. Swanson, par. 7.

9. After the dog refused to enter the cruiser, the dog turned his head towards the officer, bared its teeth and began snarling and growling viciously, while snapping its jaws at the officer. Swanson, par. 7.

10. Officer Swanson attempted to give the dog space and speak to the dog in a calm and reassuring manner while walking backwards from the dog. The dog suddenly charged with the teeth bared and lips drawn back while growling. The dog jumped off the ground and lunged toward her face. To protect herself Officer Swanson unholstered her gun and fired one shot at the dog. Swanson, par. 8.

11. Officer Swanson only shot to protect herself and not to violate anyone's clearly established constitutional rights. Swanson, par. 9.

12. Plaintiff alleges that the dog attack was "inconsistent with his breed and temperament." Plaintiff's Complaint, Doc. 2, par. 30. The dog had in fact on a prior occasion, December 24, 2010, bit a citizen when the dog was again running loose. The victim encountered the dog and was bit. The dog was neither licensed nor vaccinated. Exhibit 3 and 4, St. Petersburg Call for Service Report; Animal Services Call Detail Report.

13. The attack on Officer Swanson was at least the third known attack or aggressive behavior by the dog.

14. Officer Swanson's actions were reasonable, lawful and did not violate any known constitutional right.

15. No constitutional injury occurred as Officer Swanson's actions were reasonable and lawful.

B. Plaintiff Fails to State a Cause of Action under the Fourth or Fourteenth Amendment

16. Plaintiff asserts a Fourth and Fourteenth Amendment violation against Officer Swanson and the City of St. Petersburg. Plaintiff's Complaint, Doc. 2, par. 66. These allegations are pled in conclusory terms and do not meet federal pleading requirements.

17. It is unclear whether the Plaintiff is asserting a substantive or procedural due process claim.

18. To the extent that the Plaintiff is pursuing a procedural due process claim, the Plaintiff has failed to state a cause of action. No pre-deprivation process is due in these types of "random" alleged deprivations.

19. Plaintiff has alternative post-deprivation process as a matter of law through a Fourth Amendment claim or the judicial process by the law of Florida.

20. If Plaintiff is asserting a substantive due process claim, then Plaintiff has failed to state a cause of action. Plaintiff has not stated a property interest claim which rises to the level to afforded protection by substantive due process.

21. There is no authority which establishes a property interest of the quality required for a substantive due process protection under the circumstances alleged by the Plaintiff.

22. The Plaintiff fails to state a Fourteenth Amendment cause of action, and Officer Swanson would be entitled to qualified immunity on this Fourteenth Amendment claim.

23. The Plaintiff has failed to state a cause of action on its Fourth Amendment claim. Although dogs have been found to be “effects” within the meaning of the Fourth Amendment, Officer Swanson’s “seizure” of the dog was constitutionally permissible. The Plaintiff has failed to plead facts showing that an officer defending herself against an attack is unreasonable.

24. The Fourth Amendment does not prohibit a police officer from shooting an attacking animal. Officer Swanson would be entitled to qualified immunity as to the Fourth Amendment claim.

25. The Plaintiff has failed to plead a Fourth Amendment violation nor show how a policy, law or practice led to a constitutional tort.

C. Plaintiff Fails to State a Cause of Action of Trespass

26. Plaintiff claims the tort of trespass for the killing of his dog. Plaintiff fails to state a cause of action. Also, it is unclear whether the claim is against the City of St. Petersburg or Officer Swanson.

27. The Plaintiff alleges that the trespass to chattel was done “willfully”. This intentional act would be barred against the City of St. Petersburg by sovereign immunity, Fla. Stat. §768.28.

28. Trespass to chattel is the intentional use or interference with the property of another, without justification. Officer Swanson had justification as a matter of law and thus Plaintiff has failed to state a cause of action against her.

D. Plaintiff has Failed to State a Cause of Action of Conversion

29. Plaintiff claims the tort of conversion for the killing of his dog. Plaintiff fails to state a cause of action. Also, it is unclear whether the claim is against the City of St. Petersburg or Misty Swanson.

30. Conversion is an intentional tort and the action is barred against the City of St. Petersburg by sovereign immunity, Fla. Stat. §768.28.

31. The tort of conversion constitutes the exercise of wrongful dominion or control over property. Officer Swanson had justification as a matter of law to protect herself against an aggressive dog, and thus Plaintiff has failed to state a cause of action against her.

E. Plaintiff has failed to State a Cause of Action for Animal Cruelty

32. Plaintiff claims animal cruelty pursuant to Fla. Stat. §828.12. Plaintiff fails to meet federal pleading standards and states in conclusory terms a violation of the statute.

33. It is unclear if the Plaintiff is making an allegation against the City of St. Petersburg or Officer Swanson.

34. Florida Statute §828.12 is a criminal statute with no incorporated civil tort action.

35. Plaintiff alleges the violation of Fla. Stat. §828.12 was an intentional act. Plaintiff's Complaint, Doc. 2, par. 58. As such the claim would be barred by sovereign immunity, Fla. Stat. §768.28 against the City of St. Petersburg.

36. Florida Statute §828.12 requires the cruelty to be "unnecessary". Officer Swanson's actions in defending herself against an attacking dog are reasonable and necessary as a matter of law. Plaintiff has failed to state a cause of action against Officer Swanson.

F. Plaintiff Fails to State a Cause of Action for Intentional Infliction of Emotional Distress

37. The Plaintiff has brought a claim of Intentional Infliction of Emotional Distress against (assumedly) Officer Swanson. Plaintiff has failed to state a cause of action.

38. Plaintiff states in his Complaint he was not present while his dog was running loose, acting aggressive and attacking Officer Swanson. Plaintiff's Complaint, Doc. 2, par. 27, 29, 36. Thus the claim is barred by the impact doctrine.

39. In addition to being barred by the impact doctrine, Plaintiff has failed to state a claim that rises to the required level of outrageous conduct as a matter of law.

G. Damages

40. The Plaintiff seeks punitive damages against Officer Misty Swanson.

41. The Plaintiff's conclusory allegations in the Complaint are insufficient to entitle a claimant to recover punitive damages.

42. Plaintiff states in his Complaint that the dog "had no fair market value." Plaintiff's Complaint, Doc. 2, par. 43.

43. Plaintiff seeks "intrinsic value and loss of use" of the dog, "special and general damages", non-economic damages for grief and emotional distress. Such damages are not recoverable under the claim asserted by the Plaintiff.

WHEREFORE, the Defendants Officer Misty Swanson and the City of St. Petersburg move to dismiss the claim under FRCP 12(b)(6) for failure to state a claim upon which relief can be granted, or in the alternative, for summary judgment in favor of the Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS CITY OF ST.
PETERSBURG AND SWANSON DISPOSITIVE MOTION TO DISMISS OR IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

A. Standard of Review

1. Motion to Dismiss

In deciding a Motion to Dismiss under Rule 12(b)(6) the Court is required to view the Complaint in the light most favorable to the Plaintiff. *Murphy v. Federal Deposit*, 208 F. 3d 959, 962 (11th Cir. 2000). A Plaintiff is required to allege more than conclusions. Dismissal is appropriate if the allegations do not raise the Plaintiff's right to relief above the speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

2. Summary Judgment

The Court may grant summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The movant bears the initial responsibility for demonstrating the absence of a material issue. After this burden is met, it shifts to the non-moving party to show evidence to support its claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Matsushita Electronic v. Zenith*, 475 U.S. 574, 586 (1986).

B. Qualified Immunity

Unless the Plaintiff's allegations state a claim of a violation of a clearly established law, Officer Swanson's raising of qualified immunity entitles her to dismissal before the commencement of discovery. *Marsh v. Butler County*, 268 F. 3d 1014, 1022 (11th Cir. 2001), citing to *Mitchell v. Forsyth*, 472 U.S. 511 (1985). The Supreme Court has urged courts to apply

qualified immunity at the earliest possible stage of litigation, because the defense of qualified immunity is immunity from suit. *Marsh*. It is appropriate to raise the defense at the 12(b)(6) stage. *Behrens v. Pelletier*, 516 U.S. 299 (1996); *Marsh* at 1022-23.

A complaint will be dismissed at the 12(b)(6) stage for qualified immunity where it can be concluded that the officer did not violate clearly established law. *Marsh* at 1023.

Under the circumstances alleged, Officer Misty Swanson acted reasonably and did not violate clearly established law in defending herself by shooting the dog.

In *Esterson v. Broward County Sheriff's Department*, 2010 U.S. Dist. LEXIS 117490 (S.D. Fla. 2009) a Deputy responded to a call and was confronted by an aggressive dog. The dog charged at her, causing the deputy to shoot the dog. *Id.*, at *12. The court noted that qualified immunity offers complete protection for government officials sued in their individual capacities as long as their conduct violates no clearly established rights. *Id.*, at *21, citing to *Oliver v. Fiorino*, 586 F. 3d 898, 904 (11th Cir. 2009). The court dismissed the case, since there was no predicate constitutional violation.

Comparing the present case with *Esterson*, it is apparent here as well that not only did Officer Swanson no violate any known established right, she did not violate any rights at all. Two calls were received regarding an aggressive dog. The dog was loose in violation of St. Petersburg City Code Sec. 4-55. The officer acted reasonably and responsibly in trying to protect the citizen who called the police, and then in trying to protect herself from an attacking dog. Subsequently, it was learned the dog had a history of being loose and aggressive or biting.

Officer Swanson's actions are consistent within the actions of the deputy in *Esterson* and the claims against her should also be dismissed. The Plaintiff has failed to

demonstrate in the Complaint what clearly established right was violated, beyond mere speculation or conclusory allegations.

Hatch v. Grosinger, 2003 LEXIS 3845 (D.C. Minn. 2003) is similarly instructive. Plaintiff's dog was a 58 pound black Labrador retriever, which the owner described as "gentle" and "nice". *Id.*, at *2. Sheriff's deputies had to enter the Plaintiff's fenced yard. The dog made an aggressive charge at three deputies. The deputy fired his gun, killing the dog. *Id.*, at *14-15.

The court noted that while one could question the defendant's decision to use the maximum level of force, the Fourth Amendment does not allow for a "Monday morning quarterback" approach. Rather, given the importance in assuring that its officers be allowed to protect themselves, the split-second decision-making required, and the dog's threatening behavior, the deputy did not violate a clearly established right and was entitled to qualified immunity. *Id.* The court concluded that a reasonable officer could well have decided that the dog posed an imminent threat. *Id.*, at *14.

In *Williams v. Voss*, 2011 LEXIS 105050 (D.C. Minn. 2011) the defendant officer was serving a search warrant. While in the plaintiff's home their dog charged aggressively toward the officer. The officer shot the dog. Although the plaintiff claimed the dog was not being aggressive, she did not actually witness the shooting (as in the present case with the Glass dog). *Id.*, at *11.

The court held that the officer was entitled to qualified immunity, noting that courts have held that it is reasonable to shoot a dog that poses a risk to officer safety. *Id.*, at *13, citing to *Bailey v. Schmidt*, 239 F. Appx. 306, 308 (8th Cir. 2007); *Dziekan v. Gaynor*, 376 F. Supp. 2d 267, 271-72 (D.Conn. 2005). The court noted the "common denominator" for all cases is officer safety. *Williams* at *14.

In *Dziekan v. Gaynor* the officer shot a 55-60 pound unleashed dog running in circles within 15 feet of the officer. The officer stated the dog had its mouth open and the owner made no effort to control the dog. The court dismissed the case against the officer on qualified immunity grounds, finding the officer objectively reasonable in his belief that his actions would not violate clearly established law. *Dziekan* at 273. The government retains a strong interest in allowing law enforcement officers to protect themselves and the citizenry from animal attacks. *Id.*, at 270.

Similarly, the court in *Warboys v. Proulx*, 303 F. Supp. 2d 111 (D.C. Conn. 2004) held that the officer was entitled to qualified immunity. While tracking a suspect the plaintiff's family dog escaped through an open door. The court accepted the plaintiff's testimony that the dog "was a gentle, loving pet that had never attacked an animal or person." *Id.*, at 114. As the dog came towards the officer he unholstered his gun and shot him. *Id.*

The court acknowledged that the dog may have approached the officer merely to greet and sniff them, or to receive a pat on the head. However, the court noted that had the officer waited to see the dog's true intentions it would have been too late. The court concluded that the law did not require the officer to wait until the approaching dog was leaping at him before taking protective action. *Id.*, at 118. The law does not require a reasonable officer in his circumstances to have used less force to protect himself. *Id.*, at 119.

Contrast the aforementioned cases with *Brown v. Muhlenberg*, 269 F. 3d 205 (3rd Cir. 2001) where the court refused to find qualified immunity. The plaintiff's dog had wandered out of their fence. A stranger noted the dog was not aggressive and never tried to attack the officer. *Id.*, at 209. The owner saw the officer reach for his gun, and yelled identifying herself and asking him not to shoot. The officer then shot the dog five times. *Id.*

Clearly the Glass dog fits squarely into the cases where qualified immunity is found. An aggressive dog (and one with a prior bite), a citizen's call that the dog was aggressive, no owner in sight or attempting to assert control, and ultimately an attack on the officer, witnessed by another officer. Qualified immunity shields Officer Swanson from liability and should be applied now at its earliest stage.

C. Fourth Amendment

This Court does not need to reach the issue of qualified immunity if there is no constitutional violation. That is exactly what the Circuit Court in the factually similar case of *Altman v. City of High Point*, 330 F. 3d 194 (4th Cir. 2003) found. Involving several dogs, one was a Golden Retriever/Labrador mix that had a habit of escaping his fenced-in yard. The officer was responding to a call that the dog had bitten someone. *Id.*, at 198. When the officer arrived on the scene, the dog charged at him, stopped, but continued to growl. The dog then retreated. The dog charged again, growling and showing his teeth. At that time the officer shot and killed the dog. *Id.*, at 198-99.

The court in *Altman* did find that a dog is an "effect" for purposes of the Fourth Amendment. *Id.*, at 202. The court then looked to whether the "seizure" (shooting) of the dog was reasonable. *Id.*, at 205.

In analyzing whether a constitutional violation took place, the "substantial" interest in protecting citizens from the dangers of dogs was noted. *Id.* Significantly, the court found . . .

When a dog leaves the control of his owner and runs at large in a public space, the government interest in controlling the animal and preventing the evils mentioned above waxes dramatically, while the private interest correspondingly wanes. Put simply, while we do not denigrate the possessory interest a dog owner has in his pet, we do conclude that dog owners forfeit many of those possessory interests

when they allow their dogs to run at large, unleashed, controlled and unsupervised, for at that point the dog ceases to become simply a personal effect and takes on the nature of a public nuisance.

Id. at 205-206.

The court held that the shooting was not objectively unreasonable, and thus there was no Fourth Amendment violation. *Id.*, at 206-207. Given the conclusion that the officer's actions did not violate the Fourth Amendment, there was no need to reach the qualified immunity issue. *Id.*, at 207.

The Plaintiff's dog here, after having previously attacked and bit someone, and been held in quarantine, was again roaming the streets, this time at midnight. The dog was reported as aggressive by a civilian in two calls to the police. Police Officer Misty Swanson tried to confine the dog for animal control by coaxing it with snacks. The dog then attacked her and she reasonably and lawfully protected herself and the citizens of the community. The Plaintiff is hard pressed to allege any constitutional violation under these circumstances, and has failed in his burden to do so.

The decision in *Altman* comports with many other cases addressing the shooting of an aggressive dog and the Fourth Amendment. As the court for the Southern District of Florida in *Esterson* stated . . . "Plaintiffs have cited no caselaw that makes it sufficiently clear that the Fourth Amendment prohibits a sheriff's deputy from shooting an animal who, based on the undisputed record evidence, was threatening her life." 2010 LEXIS 117490 at *23. See also *Hatch*, 2003 LEXIS 3845 (reasonable officer could conclude that dog posed a threat; no constitutional violation); *Williams*, 2011 LEXIS 105050; *Dzielean*, 376 F. Supp. 267, 271-72 (situation called for split-second decision-making; dog posed a threat; the officer's conduct did not constitute an unreasonable search.).

As the court stated in *Warboys*, 303 F. Supp. 2d at 117, because the killing of the dog was reasonable as a matter of law, no Fourth Amendment violation occurred.

D. Fourteenth Amendment

The Plaintiff has not stated whether he is seeking a substantive or procedural due process claim. Plaintiff has failed to state a cause of action in either one.

1. Substantive Due Process

Only the most egregious official conduct can establish a claim for violation of substantive due process. The conduct must “shock the conscience”. *County of Sacramento v. Lewis*, 523 U.S. 833, 845-46 (1998). Thus in *Warboys* the shooting of an aggressive dog was not a Fourteenth Amendment substantive due process claim. *Warboys*, 303 F. Supp. 2d at 120.

In *Dziekan* the court dismissed the substantive due process, finding that their Fourth Amendment analysis of the reasonableness of the shooting of the dog “is the guide for analysis of the claim rather than the generalized notion of substantive due process. 376 F. Supp. 2d at 270, citing to *Albright v. Oliver*, 510 U.S. 266, 273 (1994). The Plaintiff has failed to meet this high burden here to “shock the conscience” and thus has failed to state a cause of action.

2. Procedural Due Process

No predeprivation process is required for the alleged wrongful killing of a dog. *Brown*, 269 F. 3d at 205, analyzing *Hudson v. Palmer*, 468 U.S. 517 (1984). Further because there are civil state tort remedies available to the plaintiffs, a post-deprivation judicial process was available, and that was all the process due. *Brown*, 269 F. 3d at 214, dismissing the Fourteenth Amendment claim.

The Plaintiff has failed to state a cause of action for the violation of the Fourteenth Amendment. Officer Swanson did not “shock the conscience” when she protected herself against an attack from a loose and aggressive dog. Further, Florida State Courts provide all the process due.

E. Trespass

Plaintiff asserts an action for the tort of trespass to chattels. Trespass is the intentional interference with a chattel of another, without justification. See, *Coddington v. Staab*, 716 So. 2d 850, 851 (Fla. 4th DCA 1998). Since the actions of Officer Swanson were with justification as a matter of law, the Plaintiff has failed to state a cause of action. Further, since trespass is an intentional tort, it would be barred against the City of St. Petersburg by sovereign immunity, Fla. Stat. §768.28; *Williams v. City of Minneola*, 619 So. 2d 983, 987 (Fla. 5th DCA 1993).

F. Conversion

Plaintiff asserts an action for the tort of conversion. Conversion is the wrongful dominion or control of property of another. *United American Bank v. Seligman*, 599 So. 2d 1014, 1016 (Fla. 5th DCA 1992). Again, since the actions of Officer Swanson were reasonable and lawful, they were not “wrongful”. Conversion is an intentional tort and is barred against the City by Fla. Stat. §768.28; *Williams v. City of Minneola*. Plaintiff has failed to state a cause of action of conversion.

G. Animal Cruelty

Plaintiff claims cruelty pursuant to Fla. Stat. §828.12. The Plaintiff fails to state how the statute was violated, or how it encompasses a civil tort action. Florida Statute §828.12 requires the cruelty to be “unnecessary”. Officer Swanson’s actions in defending herself against

an attacking aggressive loose dog were necessary and lawful. Further, sovereign immunity would bar any related claim against the City. Plaintiff has failed to state a cause of action.

H. Intentional Infliction of Emotional Distress

The Plaintiff was not present while his dog attacked Officer Swanson, resulting in the death of the dog. The impact doctrine precludes recovery for the death of the dog by the plaintiff. *Kennedy v. Byas*, 867 So. 2d 1195, 1197 (Fla. 1st DCA 2004). The impact doctrine requires some physical impact prior to the recovery of damages for emotional distress. The Plaintiff has not and cannot allege such an impact in this case, and has failed to state a cause of action. See also, *Siam v. Tampa Bay Downs*, 2009 LEXIS 31530 (M.D. Fla. 2009) (must have severe suffering from outrageous conduct as a matter of law. Conduct must be atrocious and utterly intolerable).

Intentional infliction of an Emotional Distress is an intentional tort and is barred by sovereign immunity against the City of St. Petersburg. Plaintiff has failed to state a cause of action for Intentional Infliction of Emotional Distress.

I. Municipal Liability

The Plaintiff asserts generalized claims against the City of St. Petersburg, asserting a failure to train, and a policy or custom of unlawful conduct. Where the Plaintiff has failed to demonstrate a constitutional violation, a municipality cannot be held liable for failure to train. *Hatch*, 2003 LEXIS 3845 at *16-17, citing to *Abbott v. City of Crocker*, 30 F. 3d 994, 999 (8th Cir. 1994). In *Hatch* because the court concluded the shooting of the dog was not an unreasonable seizure, the failure to train allegation must be dismissed.

Similarly, in *Warboys*, the court dismissed the negligent supervision claim because the court concluded there was no constitutional injury as a result of the officer's shooting of a dog. 303 F. Supp. 2d at 120.

J. Damages

The Plaintiff states that the dog had no fair market value. As these are the only types of damages lawfully available to the Plaintiff, should he prove his case, the Plaintiff does not have a claim he can prevail on.

Plaintiff seeks punitive damages against Officer Swanson. Conclusory allegations of entitlement to punitive damages are insufficient. *McFarland v. Conseco Life*, 2009 LEXIS 91964 *1 (M.D. Fla. 2009). Punitive damages are appropriate where the defendant's acts are deliberately violent, oppressive or malicious. *Domke v. McNeil*, 939 F. Supp. 849, 852 (M.D. Fla. 1996). Plaintiff has failed to plead or meet this burden as a matter of law.

Non-economic damages for grief and emotional distress are barred by the impact doctrine. See, *Kennedy*, 867 so. 2d at 1195.

Conclusion

Wherefore, the Defendant's Officer Misty Swanson and City of St. Petersburg move to dismiss the claim under FRCP 12(b) (6) or in the alternative for summary judgment for the Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 30, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Roy L. Glass, Esquire, at lroyglas@tampabay.rr.com.

JOHN C. WOLFE
CITY ATTORNEY

By: /s/Joseph P. Patner
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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

vs.

Case No. 8:12-cv-02405-T-26TGW

CITY OF ST. PETERSBURG, FLORIDA
A Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
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Defendants.

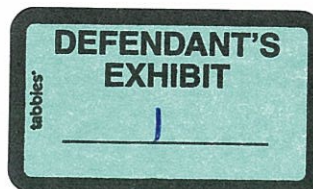
AFFIDAVIT OF MISTY SWANSON

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority, duly authorized under the laws of the State of Florida to administer oaths, personally appeared Misty Swanson, who, being first duly sworn, deposes and says as follows:

1. My name is Misty Swanson.
2. I am over 18 years of age.
3. I am a sworn police officer with the St. Petersburg Police Department and have been so employed for over four years.
4. While working in my capacity as a police officer, I have had numerous contacts with dogs prior to the October 2, 2011, encounter with the dog whereby I was forced to defend myself. In no prior dog encounter was lethal force used or required. I myself own two dogs.



5. On October 2, 2011, shortly after midnight I responded along with Officer Fotovat to a citizen call of an aggressive dog, blocking the door to a residence.

6. My actions in regard to my encounter with the aggressive dog are detailed in my attached police report, 2011-060754, and incorporated by reference herein.

7. Upon contact with the dog, I gave the dog beef jerky in an attempt to lure the dog into the cruiser and contain it for animal control. After the dog refused to enter the cruiser, I attempted to view the dog's collar. The dog quickly turned his head back in my direction, bared its teeth and began snarling and growling viciously, while snapping its jaws at me.

8. I attempted to give the dog space and speak to the dog in a calm and reassuring manner. I walked backwards from the dog. The dog suddenly charged at me with his teeth bared and lips drawn back while growling. The dog jumped off the ground and lunged toward my face. To protect myself I unholstered my gun and fired one shot at the dog.

9. I only shot the dog to protect myself. I have subsequently learned that the dog had previously bitten another person, according to Animal Control records. At no time did I attempt to violate anyone's clearly established constitutional rights.

FURTHER AFFIANT SAYETH NAUGHT.


Misty Swanson

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this 29th day of October, 2012 by Misty Swanson, who is personally known to me or who has produced FL DRIVER LICENSE # 9260 as identification and who did take an oath, and who appeared before me at the time of notarization.

(SEAL)



KATHLEEN M. DARA
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE153903
Expires 2/20/2016

NOTARY PUBLIC:

Sign :

Kathleen M Dara

Print:

KATHLEEN M DARA

State of Florida at Large

My Commission Expires:

2/20/16

Incident Investigation Report

Agency: SPPD

Case Number: 2011-060754

Date Printed: 10/21/2011 14:13:08

Report Type: ANIMAL COMPLAINT

(43332) FOTOVAT, MICHELLE M

Incident Information

Date/Time Reported 10/02/2011 00:25	Date/Time From 10/02/2011 00:25	Date/Time To 10/02/2011 00:25	Officer (43332) FOTOVAT, MICHELLE M
Incident Location 445 20th Av Ne, St Petersburg, FL 33704			
Case Status: FURTHER INVESTIGATION			Case Disposition:

Incident Report Dissemination ☐ State Attorney ☐ CASA ☐ Other

Charges

1	Charge Type	Description ANIMAL COMPLAINT	Statute 999	UCR 999	<input type="checkbox"/> Att <input checked="" type="checkbox"/> Com
Alcohol, Drugs or Computers Used <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computers		Location Type RESIDENCE SINGLE...	Premises Entered	Forced Entry <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Weapons 1. 2. 3.
Entry	Exit	Criminal Activity			
Bias Motivation		Bias Target	Bias Circumstances		Hate Group

Witnesses

Seq. # 1	Name (Last, First, M) GREW, HEIDI A	Race W	Sex F	DOB 03/17/1970	Age 41
Address 435 20TH AV NE, ST PETERSBURG, FL 33704		Cell Phone: (727) 418-3334		Home Phone (727) 822-9876	
Employer Name/Address ABLEST STAFFING SERVICES		Occupation: DIRECTOR MAJOR		Business Phone (727) 299-1200	
Witness Type WITNESS					

Witness Notes

OBSERVED THE DOG @ FIRST ENCOUNTER

Seq. # 2	Name (Last, First, M) OKEEFFE, LINDA MARY	Race W	Sex F	DOB 08/17/1961	Age 50
Address 445 20TH AV NE, ST PETERSBURG, FL 33704		Cell Phone: (727) 433-3273		Home Phone (727) 821-5861	
Employer Name/Address		Occupation:		Business Phone	
Witness Type WITNESS					

Witness Notes

OWNER OF RESIDENCE WHERE DOG WAS SHOT

Agency: SPPD

Case Number: 2011-060754

Date Printed: 10/21/2011 14:13:08

Report Type: ANIMAL COMPLAINT

(43332) FOTOVAT, MICHELLE M

Seq. # 3	Name (Last, First, M) OKEEFFE, GREGORY WHITNEY	Race W	Sex M	DOB 02/14/1961	Age 50
Address 445 20TH AV NE, ST PETERSBURG, FL 33704		Cell Phone:		Home Phone (727) 821-5861	
Employer Name/Address SMITH, KLINE, BEECHAM		Occupation: SALESMAN (WORKS)		Business Phone (813) 821-5861	
Witness Type WITNESS					

Witness Notes

OWNER OF RESIDENCE WHERE DOG WAS SHOT

Other Persons Involved

Name Code Complainant	Seq. # 1	Name (Last, First, M) WILLIAMS, BRIGITTE ELISABETH	Race W	Sex F
Address 436 20TH AV NE, ST PETERSBURG, FL 33704		Cell Phone:		Home Phone (727) 823-7813
Employer Name/Address		Occupation:		Business Phone
Name Code Complainant	Seq. # 2	Name (Last, First, M) WILLIAMS, LAURA KATHERINE	Race W	Sex F
Address 425 20TH AV NE, ST PETERSBURG, FL 33704		Cell Phone:		Home Phone (727) 348-1617
Employer Name/Address		Occupation:		Business Phone

Assisting Officers

(24528) SCHMIDT, DAMIEN C
 (28183) MARTINI, JOHN A
 (28768) LOUNGE, KARL D
 (29621) PATTERSON, NATHALY
 (44246) SWANSON, MISTY M

Incident Report Narrative

NARRATIVE

I responded to 436 20th Avenue Northeast in reference to an animal complaint. The call notes indicated that an unknown dog had been aggressive with the complainant earlier. The same dog was now sitting on the complainant's porch making it impossible for her to get back inside her house. Upon my arrival I spoke with complainant, Brigitte WILLIAMS. B. WILLIAMS advised that at around 11 p.m. she and her dog 'Rocky' were visiting with her neighbor at 425 20th Avenue Northeast. B. WILLIAMS stated that 'Rocky' was in front of 435 20th Avenue Northeast when a dog she has never seen before approached her dog. B. WILLIAMS said she ran over to both dogs to prevent a fight when she noticed that the unknown dog had a collar with tags on it. B. WILLIAMS says she tried to check the tag for any owner information when the dog got aggressive with her by barking, growling, and snapping at her. B. WILLIAMS says the unknown dog then started to attack 'Rocky' so quickly managed to get him inside her house. Afterwards the unknown dog kept wandering around her front yard so B. WILLIAMS returned to her friends house in hopes that the unknown dog would just move along. After about 1 hour B. WILLIAMS was ready to go back home but the unknown dog was now laying at her front door. B. WILLIAMS called Police because she felt that otherwise she would be attacked trying to get back into her own house by this unknown dog.

Agency: SPPD

Case Number: 2011-060754

Date Printed: 10/21/2011 14:13:08

Report Type: ANIMAL COMPLAINT

(43332) FOTOVAT, MICHELLE M

Incident Report Narrative

I spoke with Laura 'Katie' WILLIAMS who advised that she had seen the dog become aggressive both with B. WILLIAMS and her dog 'Rocky'. L. WILLIAMS stated that she told B. WILLIAMS not to go back over to her house without calling someone first because she was afraid that the dog would attack her. L. WILLIAMS says she called Police for B. WILLIAMS. After the shooting L. WILLIAMS advised me that she could hear the dog growl at Officer SWANSON and knew that what she heard afterwards was a shot being fired at it although she did not actually see it. Neighbor, Heidi GREW, also advised that she was present earlier when the dog turned on B. WILLIAMS and her dog 'Rocky'.

At this point I called Officer SWANSON and she agreed to assist me in possibly confining the aggressive dog so animal control would be able to take custody of it. Officer SWANSON arrived with beef jerky and opened it then the dog must have smelled it so it immediately left the front porch of B. WILLIAMS and walked towards us. I told B. WILLIAMS to enter her residence and Officer SWANSON and I would attempt to get the dog in the rear of the my Police cruiser. Officer SWANSON and I were able to feed the dog pieces of the jerky and even threw a piece into the back of my car trying to get the dog to jump in. The unknown dog would not enter the rear of the car and started to walk past it towards 445 20th Avenue Northeast.

Officer SWANSON was positioned near a fence lined with tall bushes and a vehicle in the driveway when she made one last effort to obtain information on his owner from the collar. Once she did this the dog bared its teeth, growled, and charged at her like he was going to attack and bite her. Officer SWANSON was about 2 feet from the dog when I observed her pull out her gun and fire one shot at the clearly now vicious dog and I was about 4-5 feet away from them. The bullet Officer SWANSON fired obviously struck the dog because it started to squeal and whimper and also had blood coming from it which continued for about 2 minutes.

I advised the situation over the radio channel and Acting Sergeant SCHMIDT arrived shortly thereafter. The dog finally laid down on the West side of the driveway at 445 20th Avenue North. I was instructed to speak with the nearby neighbors for any witness statements. I spoke with the above captioned persons who did not observe the shooting but had knowledge of the dog's behavior prior to the shooting. I spoke with the owners of the driveway where the dog died, Greg and Linda O'KEEFE, and obtained their demographic information. While speaking with the people in the neighborhood I further attempted to decipher who the owner of the dog might be with negative results however I was unable to make contact at 426 20th Avenue Northeast as they did not answer the door. I stoodby during the shooting investigation and advised Detective COOPER of the complainant's demographic information. I took no further action.

EOR

Agency: SPPD

Case Number: 2011-060754

Date Printed: 10/21/2011 14:13:08

Report Type: ANIMAL COMPLAINT

(24528) SCHMIDT, DAMIEN C

Supplement Information

Supplement Date 10/02/2011 22:15:36	Supplement Type FOLLOW UP	Supplement Officer (24528) SCHMIDT, DAMIEN C
Contact Name		
Case Status: FURTHER INVESTIGATION		Case Disposition:

Witnesses

Seq. # 4	Name (Last, First, M) HUSTON, CHERYL L	Race W	Sex F	DOB 08/18/1966	Age 45
Address		Cell Phone:		Home Phone	
Employer Name/Address SPCA		Occupation: ANIMAL SPECLIST		Business Phone (727) 586-3591	
Witness Type					

Witness Notes

Supplement Narrative

On this date of the incident, I was the Acting Sergeant. I responded to the location after being requested by Ofc. Fotovat for a dog shooting. Upon arrival, I found Officers Fotovat and Swanson standing at the edge of the driveway. There was a large pool of blood and a large golden retriever laying off along the edge of the driveway. I made contact with the officers and asked if they were alright, were they injured and they advised they were okay. I was aware of the nature of the animal complaint call which advised there was an aggressive dog on the complaints porch denying her access to getting into her residence.

I asked Officer Swanson to briefly tell me what happened and she advised me the dog had been social with them and were trying to coax it. The Officers were now across the street from where the call originated. They could see a collar and tag and were trying see if they could read the tag and she was trying to check it when the dog turned aggressive, baring it's teeth and started to advance on her growling. She sttd she just reacted and fired a single shot and hit the dog who turned and went and collapsed at the edge of the driveway.

Where Officers Swanson and Fotovat were standing, there was no place for them to retreat to, no obstacles to place between them and the dog. There were several parked cars in the driveway and they were at the back of the cars. There was open sidewalk behind them or the street. The distance estimated between the Officers and the dog may have been about 5-6 feet. Sgt. Lounge arrived to assist me and stayed with Officer Swanson who I had back standing at her vehicle. I instructed Officer Fotovat to interview witnesses as I secured the area. I located a single spent casing laying on the brick driveway along the drivers side of the grey parked vehicle. I marked it with a piece of paper.. The dog had not expired at this time and requested animal services respond. I also requested a technician.

The injured dog was still moving slightly as I approached it as I could see a tag on the dirty tan collar. The dog did expire approx 10 minutes later. SPCA animal specialist Cheryl Huston did arrive along with the technician. Scene photo's were taken along with a scene diagram. IA investigator A. Cooper had arrived on scene and I briefed her on the events. Officer J. Martini was also on scene and stood by the scene to insure the severely wounded animal would not wander off and was present when it expired.

Once the scene was processed, I assisted the SPCA in dealing with the deceased animal. The tag on the collar was old and had a Pinellas County tag# of 4023921. We still had no information on who the owner of the dog was. I did locate a single gunshot wound to the animal along the left side of the body and I did not see an exit wound. Once the animal was removed, I had the FD respond for a washdown of the driveway. I returned to the station where I met with PBA Rep R. Lopez, Office Swanson and IA Investigator A. Cooper and the technician. Once they were done, I then inspected the firearm of Officer Swanson, serial number EYZ486US. I found her firearm to be in good working order, all safeties functional and returned the firearm to Officer Swanson. I then issued her a single round to replace the round she expended.

NFA

Supplemental Report

Agency: SPPD

Case Number: 2011-060754

Date Printed: 10/21/2011 14:13:09

Report Type: ANIMAL COMPLAINT

(44246) SWANSON, MISTY M

Supplement Information

Supplement Date 10/04/2011 02:46:00	Supplement Type FOLLOW UP	Supplement Officer (44246) SWANSON, MISTY M
Contact Name		
Case Status: FURTHER INVESTIGATION		Case Disposition:

Supplement NarrativeNARRATIVE (FOLLOW UP/ ANIMAL COMPLAINT)

The following report is a Follow up to an Animal Complaint. On 10/02/11 at 0025 hours, Ofc. Fotovat was dispatched to an Animal Complaint, referencing and aggressive dog. Ofc. Fotovat was sent to the call by herself. She sent me an MDT message and requested my assistance with attempting to contain the dog for animal control. When I arrived to the scene, I met with Ofc. Fotovat and the complainant. She advised me that an aggressive dog was laying on the complainants front porch, blocking the door to her residence. She advised that when the complainant attempted to go into her residence the dog would become aggressive and bark and growl at her.

I observed the dog, a Golden Retriever, laying on the front porch in front of the complainants door. I carry beef jerky with me, for cases involving dog or animal complaints. On several occasions I have used beef jerky to lure dogs into the rear of the cruisers, in order to contain them for animal control. Ofc. Fotovat and myself walked up to the front porch of the complainants residence and I held out the beef jerky and the dog stood up and walked off the porch. The complainant was then able to go inside her residence. I continued to hold the beef jerky out towards the dog and it followed us to Ofc. Fotovats vehicle. I then gave the dog a piece of the beef jerky. I then threw the other half of the beef jerky into the rear seat of Ofc. Fotovats vehicle, in an attempt to get the dog to enter the rear of the cruiser to contain it. The dog stepped up with its front paws as if it was going to enter the vehicle. It then backed away from the door and walked to the rear of Ofc. Fotovats cruiser.

I then took the beef jerky out of the cruiser and walked around to the rear of the cruiser. The dog then walked up on the the North side of 20 Av NE., onto the side walk. Ofc. Fotovat and myself observed the the dog had a collar on and a metal identification tag. Due to the dogs behavior thus far, it appeared that it would be safe to attempt to try and read the identification tag on the dogs collar. I was standing on the North side of the dogs position on the side walk. Behind my position was a tall fence, over grown with bushes. Beside the fence was an SUV parked to the East of the fence, leaving about a 3ft gap between the fence and the SUV. Ofc. Fotovat was positioned to the South of my stance, leaving the dog in between us. Ofc. Fotovat attempted to offer the dog another piece of beef jerky, while I attempted to look at the dogs identification tag. The dog appeared to no longer be interested in the beef jerky, but was still being cooperative. I then leaned slightly over to turn the dogs collar, to view the identification tag. When I touched the collar and turned it slightly, the dog quickly turned its head back in my direction. It bared its teeth and began snarling and growling viciously, while snapping it's jaws at me.

I then attempted to disengage from the dog and give it some space. I tried to speak to the dog in calm manor and reassure it that I was friendly. At this point there was now approximately 4 or 5 ft between myself and Ofc. Fotovat, and she was still to the South of my stance. The dog was now positioned to the SE of my stance. The dog and I were now positioned in the drive way of 445 20 Av NE. The dog then began lunging toward me. I walked backwards again to get away from the dog, at which point I realized that I was in between the fence and the SUV. The dog was blocking my only exit. The dog continued snarling and growling viciously. The dog then suddenly charged at me. It's teeth were bared and its lips drawn back while growling, the dog then jumped up off the ground and lunged toward my face, from a position of about 2 ft in front of me. I quickly upholstered my firearm, held it in the low ready position at a down ward angle, making sure no persons were in my line of fire, and fired one shot at the dog.

The dog then fell to the ground. I could not initially hear the sounds the dog was making as my ear was ringing from the loudness of the shot from my fire arm. After firing the shot the dog fell to the ground, it began scooting around on the ground in a circle and large amounts of blood began spraying the ground all around the dog. The dog was still very actively moving, but was no longer attacking, so I did not fire another shot. I kept my fire arm drawn and aimed at the dog, as I did not know how severely it was injured, or if it may try to attack again. Once my ear stopped ringing, I could hear the dog screeching and yelping loudly. This continued for approximately 2 minutes. It appeared the the round had struck the dog in the lower abdomen on the inside of it's rear leg area, but I could not tell for sure as there was a large amount of blood. I then called out to Ofc. Fotovat to advise Acting Sgt. Schmidt to come to the scene and that I had discharged my fire arm during a dog attack. I was unable to call out over the radio, as I still had my fire arm out, as the dog was still moving and a potential threat.

Ofc. Fotovat called for Act. Sgt. Schmidt and advised him what had and was occurring. The dog then dragged itself to the East side of the drive way of 445 20 Av NE., clearing a path for me to safely walk away from the fence and SUV. I then holster my fire arm, as the dog was now laying still on the ground. I walked over to Ofc. Fotovat and we waited for Act. Sgt. Schmidt and additional assistance to arrive.

NFI/EOR

Supplemental Report

Agency: SPPD

Case Number: 2011-060754

Date Printed: 10/21/2011 14:13:09

Report Type: ANIMAL COMPLAINT

(44246) SWANSON, MISTY M

1 **St. Petersburg Police Department**
2 **Communication Center Transcription of**
3 **Complaint Writer Transcripts**
4 **Offense 2011-60754: District II, at 01:06 - 01:52**

5 **Comm:** **St. Petersburg Police this line is recorded**

6 **Comm:** **St. Petersburg Police can I help you?**

7 **L. Williams:** **Hi, we just called in about a stray dog thats kind of**
8 **blocking the entrance to my friends house. Ah, and**
9 **he we saw him earlier and he got aggressive and now**
10 **he's kind of sitting on the front porch and we had**
11 **called in about 15 minutes ago.**

12 **Comm:** **436 20th?**

13 **L. Williams:** **yes.**

14 **Comm:** **Yes.**

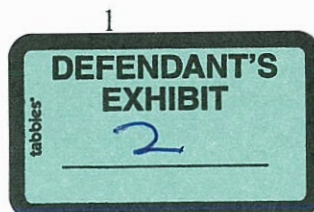
15 **L. Williams:** **and we didn't know if there was an officer in the**
16 **area or if its going to be awhile before she is able to**
17 **go home?**

18 **Comm:** **Well we have the call set up we're just trying to get a**
19 **unit freed up to get over there.**

20 **L. Williams:** **Okay.**

21 **Comm:** **Ah, they'll get there as quick as they can?**

22 **L. Williams:** **All right thank you.**



1 **Comm:** You are welcome, have a good night.

2 **L. Williams:** Good night.

3 **TAPE ENDED**

4 **Comm:** St. Pete Watkins, recorded line.

5 **L. Williams:** Hi ah, this is...

6 **Comm:** Hello?

7 **L. Williams:** Hi, I'm calling there is a dog that has gotten
8 aggressive with us that is actually sitting on my
9 friend's front porch on our street and she needs to
10 get back in her house. She's at my house now. And
11 the dog is sitting there and I'm a little afraid to,
12 she's a little afraid to go in her house because she
13 has her dog inside the house that's at the window.
14 But this stray does is like, like trying, wants to get in
15 the house to get to her dog, he's not acting
16 aggressive now. But when she tried to like lead the
17 dog away he got aggressive with her and I don't
18 know if there is an in County 24 hour animal control
19 or but.

20 **Comm:** But, okay so the dog is sitting on her porch and she
21 can't get in her own house?

22 **L. Williams:** Correct.

23 **Comm:** Okay. What is the address that this is?

COMMUNICATION CENTER TRANSCRIPT - Complaint Writer
case 2011-60754

1 **L. Williams:** **Its 436 20th Avenue Northeast.**

2 **Comm:** **and that's a house or apartment?**

3 **L. Williams:** **It's a house.**

4 **Comm:** **And what is ah, I guess you and your friends name?**

5 **L. Williams:** **Her name is Brigitte Williams and my name is Katie**
6 **Williams. Just coincidence we're not related or**
7 **anything.**

8 **Comm:** **And a phone number to reach you all now?**

9 **L. Williams:** **Ah, ah 727-348-1617.**

10 **Comm:** **Okay, are you in a vehicle or at you at a different**
11 **house, were are you guys waiting?**

12 **L. Williams:** **We are on the house across the street we're on the**
13 **front porch.**

14 **Comm:** **Okay.**

15 **L. Williams:** **and we'll see you when you come up and we'll if**
16 **they are able to send someone.**

17 **Comm:** **Yeah, I'm going send someone out there.**

18 **L. Williams:** **Okay.**

COMMUNICATION CENTER TRANSCRIPT - Complaint Writer
case 2011-60754

1 **Comm:** **All right I'll have them out there, thank you.**

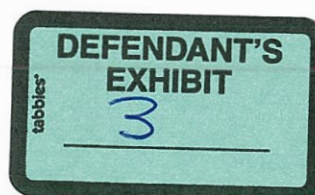
2 **L. Williams:** **Thank you.**

3 **Comm:** **Um hum you're welcome.**

4 **TAPE ENDED**

Calls For Service Report				Call ID: 2010301963		Printed: October 24, 2012	
1. Agency SPPD		2. Person Received Complaint Sanborn, Crystal A		3. Date/Time Received 12/24/2010 08:12 4. Time Dispatched 08:15		5. Time Arrived 08:20 6. Time Complete 09:46	
7. Case # -		Accident # -					
8. Nature Of Incident		ANIMAL COMPLAINT					
9. Location Of Incident		1401 4TH ST N, ST PETERSBURG, FL 33704					
10. Victim or Caller		JILL JAEGER					
11. Classification		12. How Received 'PHONE' I/CAD		13. Disposition INCIDENT OCCURRED-NO		14. Officer Andrews, Meri E	
						15. Date Submitted 12/24/2010	

Notes: COMPL IS EMPLOYEE AT ABV.. X56 W/COMPL OUTSIDE. COMPL ADVS STRAY GOLDEN RETRIEVER JUST BIT ONE OF HER CUSTOMERS. ** LOI search completed at 12/24/10 08:12:39 ANIMAL CONTROL WILL NOT COME OUT.. TOLD COMPL THEY DON'T OPEN TIL 9:00. STRAY IS STILL IN COMPLS P/LOT SHE IS TRYING TO KEEP IT FRM RUNNING OUT INTO TRAFFIC. NFI NO FURTHER INFORMATION ** LOI information for Event # E2010301963 was viewed at: 12/24/10 08:16:09 ** >>>> by: TERESA A. ANIBALLI on terminal: pdcom026 *** WHEN OFC HAS AN EYEBALL ON DOG.. LET ME KNOW AND I'LL CALL DOG CONTROL. DOG IS ON A LEASH....HAD BEEN LOCATED IN THE AREA OF 22 AV AND LOCUST....WAS THEN BROUGHT HERE BY THE SUBJECT.....AS WAS UNLOADED FROM VEHICLE....BIT HAND.... ANIMAL CONTROL TOLD COMPL TO CALL POLICE DOG IS BEING TEMP PLACED IN A KENNEL AT THE CLINIC UNTIL ANIMAL CONTROL RESPONDS... POSS OWNER OF THE DOG LIVES AT 929 14TH ST N...THIS PERSON CALLED ABOUT MISSING GOLDEN RETRIEVER DOG DOG CONTROL WILL CALL BACK WITH ETA ** LOI information for Event # E2010301963 was viewed at: 12/24/10 08:50:45 ** >>>> by: MARIE L. DEGAN on terminal: pdcom019 244E -- X4X6 SIGNED OVER DOG TO ANIMAL CONTROL



Calls For Service Report				Call ID: 2010301963		Printed: October 24, 2012	
1. Agency SPPD		2. Person Received Complaint Sanborn, Crystal A		3. Date/Time Received 12/24/2010 08:12		5. Time Arrived 08:20	
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10/23/2012 3:34 PM

Page 1 of 1

Animal Services**Call Detail Report**

ECN: 144321

ECN	Priority	Call Date	Status	Zone	ACO	Call Location
144321	1	12/24/2010 10:28	C	2	CATHERINE RUTENBECK	1401 4TH ST N ST PETERSBURG, FL 33704

Locked On: 12/24/10 10:28 AM
Arrived: 12/24/10 10:28 AM
Departed: 12/24/10 10:38 AM
Dispatch: 4 POLICE STANDING BY
 6 CITIZEN BITTEN
 7 ALLEGED SUSPECTED OFFENDER
 30 STAND BY CALL
Call: SPPD STANDING BY WITH A CONTAINED BITE DOG AT NORTHEAST ANIMAL HSP.

Complainants

Name/Address: ANDREWS SPPD 1401 4TH ST N ST PETERSBURG, FL 33704
Phone: (727) 893-7780

Violation Codes: 39-DOG NOT LICENSED OR VACCINATED
 44-BITE OCCURRED

Action Codes: 61-IMPOUNDED DOG(S)
 65-COUNSELED COMPLAINANT
 71-BITE INVESTIGATION STARTED/COMPLETED

Comments: MET WITH OFFICER ANDREWS FROM SPPD. DOB 12-24-10 EQQ 1-3-11. SHE STATED THE VICTIM FOUND THE DOG LOOSE. TOOK THE DOG TO NORTHEAST ANIMAL HSP. WHEN SHE GOT GRABBED THE DOGS COLLAR TO REMOVE THE DOG FROM THE CAR IT BIT HER. HAVE A 402 ON VICTIM. IMPOUNDED THE DOG AHC# 306054 A MALE OLD GOLDEN. OFFICER ANDREWS STATED A CITIZEN CALLED SPPD THAT THEY ARE MISSING A GOLDEN FROM 929 14TH ST N. NOT SURE IF THIS IS THE SAME DOG. HAVE NO OTHER INFO.#13

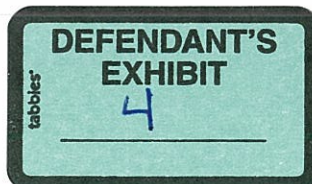
Suspected Offenders

Name/Address: UNKNOWN 929 14TH ST N ST PETERSBURG, FL 33704
Phone: ()-

Violation Codes:

Action Codes:

Comments: POSSIBLE OWNER OF BITE DOG PER SPPD.#13



Pinellas County Animal Control Bite Report

Bite Event Number: 20102174

Bite Event Status: I

Period: 2010-12

BITE EVENT INFORMATION

Bite Location:	Bite Event Date Time: 12/24/10 12:00 AM
Address: 1401 4TH ST N	Dangerous Finding:
ST PETERSBURG, FL 33704	Risk:
Reported By: SPPD	On Date: 12/24/2010 How: INPERSON
	Litigation: N
Circumstance(s): GETTING DOG OUT OF CAR.#69	

OWNER INFORMATION

<u>Owner</u>	<u>Status</u>	<u>Home</u>	<u>Work</u>	<u>Cell</u>	<u>Other</u>
RAY/LAUREN GLASS	Registered	(727) 384-8888		(727) 502-9821	
345 21ST AVE NE					
ST PETERSBURG, FL 33704					

ANIMAL INFORMATION

Name: BOOMER	Born:	Sex: MALE	Weight: 74
Type: DOG			
Breed: GOLDEN RETRIEVER		Vaccination Date: 03/10/2010	
Breed Size:		Spayed/Neutered: N	
Color: GOLDEN		Acquired From:	
Distinct Looks:			
Ears: FLOPPY EARS	Coat: MEDIUM HAIRE	Tail: NORMAL TAIL	
Microchips:		Animal History Card:	
		License Tag Number: 4023921	
Tattoo:			
Comments:			

CONTACTS

<u>Date</u>	<u>ACO</u>	<u>Person Contacted</u>	<u>Comments</u>
01/03/2011	PAT CALLAHAN	victim	NOTIFIED THE VICTIM #60
01/03/2011	PAT CALLAHAN	owner	THE OWNER CAME INTO THE SHELTER WITH THE DOG FOR QUARANTINE RELEASE. I RELEASED TE DOG ALIVE. #60
12/27/2010	JAMES MCGILL	RAY/LAUREN GLASS	THE DOG OWNER CAME INTO PCAS. I RELEASED THE DOG TO THE OWNER AND PLACED THE DOG ON HOME QUARANTINE. I COUNSELLED THE DOG OWNER ON HOME QUARANTINE POLICIES AND PROCEEDURES. COMPLETED A HOME QUARANTINE FORM AND 402.#69
12/24/2010	CATHERINE RUTENBECK	SPPD	ACO 13 MADE CONTACT WITH SPPD AND THE VICTIM ON ECN# 144321. ACO 13 IMPOUNDED THE BITE DOG ON AHC# 306054. COMPLETED A 402. COUNSELLED ON QUARANTINE POLICIES AND PROCEEDURES.#69

LICENSE Search Results

Page 1 of 1

License Info Tag # 4023921 << Prev Next >> License Print Previous Impounds License History

Vacc Dur	Type	Tag Fee	Status	Tag #	Tag Date	Expire Date	Vacc Date	Vacc Exp Date
3	B	20.00	A	4023921	03/10/2010	03/09/2013	03/10/2010	03/09/2013

Notice Date Notice Code

Comments

Owner Info

Name

LAUREN GLASS

Address

Primary Address
345 21ST AVE NE
ST PETERSBURG, FL 33704

Phone Number

(727) 384-8888 P

Animal Info

Name

BOOMER

Type

D

Sex

M

Color

GOLDEN

Breed

GOLDEN RETRIEVER

Size

Chip

Tattoo

Coat

Ears

Tail

Mix

S/N

Birthdate

Age

Weight

Distinct Looks

Litter Member

Litter Size

Guard Dog Tag #

Clinic #

Rabies Clinic #

U

N

12/10/1999

11Y 10M

74.0

79

Created By: 21142 Created Date: 5/12/2010 11:53:40 AM Updated By: 90385 Updated Date: 12/27/2010 11:7:0 AM Deposit Date: 04/09/2010

LICENSE Search Results

Page 1 of 1

License has expired!!

License Info Tag # 3197828 << Prev Next >> License Print Previous Impounds License History

Vacc Dur	Type	Tag Fee	Status	Tag #	Tag Date	Expire Date	Vacc Date	Vacc Exp Date
3		15.00	A	3197828	02/07/2004	02/07/2007	02/07/2004	02/07/2007

Notice Date Notice Code

Comments

FOUND AT LARGE 11/01/09 #H86134760321 No

Owner Info

Name

ROY GLASS

Address

345 21ST AVE NE
ST PETERSBURG, FL 33704

Phone Number

(727) 502-9821 H

Animal Info

Name

BOOMER

Type

DOG

Sex

M

Color

GOLDEN

Breed

GOLDEN RETRIEVER

Size

Tattoo

Coat

Ears

Tail

Mix

S/N

Birthdate

Age

Weight

Distinct Looks

Litter Member

Litter Size

Guard Dog Tag #

Clinic #

Rabies Clinic #

Y

01/01/2004 8Y 9M

0.0

79

MicroChip 1

MicroChip 2

MicroChip 3

MicroChip 4

Created By: Created Date: Updated By: Updated Date: Deposit Date:

LICENSE Search Results

Page 1 of 1

License has expired!!

License Info Tag # 3066828 << Prev Next >> License Print Previous Impounds License History

Vacc Dur	Type	Tag Fee	Status	Tag #	Tag Date	Expire Date	Vacc Date	Vacc Exp Date
1		15.00	A	3066828	02/01/2003	02/01/2004	03/03/2001	03/03/2004

Notice Date Notice Code

Comments

Owner Info

Name

ROY GLASS

Address

345 21ST AVE NE
ST PETERSBURG, FL 33704

Phone Number

(727) 502-9821 H

Animal Info

Name

BOOMER

Type

DOG

Sex

M

Color

GOLDEN

Breed

GOLDEN RETRIEVER

Size

Tattoo

Coat

Ears

Tail

Mix

S/N

N

Birthdate

02/01/2003 9Y 8M

Age

Weight

0.0

Distinct Looks

Litter Member

Litter Size

Guard Dog Tag #

Clinic #

79

Rabies Clinic #

MicroChip 1

MicroChip 2

MicroChip 3

MicroChip 4

Created By: Created Date: Updated By: Updated Date: Deposit Date:

LICENSE Search Results

Page 1 of 1

License has expired!!

License Info Tag # 2046893 << Prev Next >> License Print Previous Impounds License History

Vacc Dur	Type	Tag Fee	Status	Tag #	Tag Date	Expire Date	Vacc Date	Vacc Exp Date
1		5.00	I	2046893	03/02/2002	03/02/2003	03/03/2001	03/03/2004

Notice Date Notice Code

Comments

RENEWAL-NEW TAG# 2046893

Owner Info

Name

ROY GLASS

Address

345 21ST AVE NE
ST PETERSBURG, FL 33704

Phone Number

(727) 502-9821 H

Animal Info

Name

BOOMER

Type

DOG

Sex

M

Color

GOLDEN

Breed

GOLDEN RETRIEVER

Size

Tattoo

Coat

Ears

Tail

Mix

S/N

Birthdate

Age

Weight

Distinct Looks

Litter Member

Litter Size

Guard Dog Tag #

Clinic #

Rabies Clinic #

N

11/01/2001

10Y 11M

0.0

MicroChip 1

MicroChip 2

MicroChip 3

MicroChip 4

Created By: Created Date: Updated By: Updated Date: Deposit Date:

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

v.

CASE NO: 8:12-cv-2405-T-26TGW

CITY OF ST. PETERSBURG, FLORIDA,
a municipal corp., and St. Petersburg
Police Officer, MISTY SWANSON,
jointly and severally

Defendants.

_____ /

ORDER

The Defendants have filed a dispositive motion to dismiss Plaintiffs' complaint or alternative motion for summary judgment, thus prompting this Court to examine its allegations. In the Court's view, the Plaintiffs' complaint is the quintessential shotgun pleading that has been condemned on numerous occasions by the Eleventh Circuit Court of Appeals. See Davis v. Coca-Cola Bottling Co. Consolidated, 516 F.3d 955, 979 n.54 (11th Cir. 2008) (collecting cases).¹ As in Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corporation, 305 F.3d 1293, 1295 (11th Cir. 2002), the complaint "contains

¹ The Davis Court, speaking through Judge Tjoflat, also engaged in a thorough and extensive discussion of the havoc that such pleadings wreak on the judicial system, litigants, and the public at large. 516 F.3d at 979-84.

several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (i.e., all but the first) contain irrelevant factual allegations and legal conclusions.” Under these circumstances, the Court has the inherent authority, even if not requested by opposing counsel, to demand a repleader *sua sponte*. See Lumley v. City of Dade City, Fla., 327 F.3d 1186, 1192 n.13 (11th Cir. 2003) (suggesting that when faced with a shotgun pleading a district court, acting on its own initiative, should require a repleader); Magluta v. Samples, 256 F.3d 1282, 1284 n.3 (11th Cir. 2001) (noting that district courts confronted by shotgun complaints have the inherent authority to demand repleader *sua sponte*).

ACCORDINGLY, it is **ORDERED AND ADJUDGED** as follows:

- 1) Plaintiffs shall replead their complaint within fifteen (15) days of this order. In repleading as to counts I, II, III, and IV, Plaintiffs shall make clear whether those causes of action are against the Defendant City, the Defendant Officer, or both. In repleading as to Count V, Plaintiffs shall make clear whether they are asserting a procedural or substantive due process claim under the Fourteenth Amendment.
- 2) Defendants shall file their responses within fifteen (15) days of service of the repleaded complaint.
- 3) The Motion to Dismiss or Alternative Motion for Summary (Dkt. 8) are **denied without prejudice as moot**.

DONE AND ORDERED at Tampa, Florida, on October 30, 2012.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

vs.

Case No.8:12-cv-02405-RAL-TGW

CITY OF SAINT PETERSBURG, FLORIDA,
a Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
severally,

Defendants.

**PLAINTIFFS' MOTION FOR ORDER OF VOLUNTARY DISMISSAL OF COUNT V
(Claims for Relief against Swanson and the City of Saint Petersburg)
AND SUPPORTING MEMORANDUM OF LAW**

Plaintiffs move, pursuant to Fed. R. Civ. P. 41(a)(2) and Local Rule 3.01(a) that this Court enter its Order of Voluntary Dismissal of Count V, (§§ 1983, 1988, claims for relief against Swanson and the City of Saint Petersburg) amending its Order entered October 30, 2012, based upon the following:

BACKGROUND

1. Plaintiffs' filed their five (5) Count Complaint in State Court on October 5, 2012. The Defendants timely filed their Notice of Removal on October 25, 2012 based upon Federal question jurisdiction applicable to Count V (42 U.S.C. §§1983, 1988).

2. Thereafter, this Court entered its Order October 30, 2012 denying Defendant's Motion to Dismiss and Motion for Summary Judgment but, *sua sponte*,

dismissing the Complaint without prejudice and ordering the same be amended within fifteen (15) days.

3. Previous to this, on October 25, 2012, Plaintiffs filed their Notice of Intent to File a Motion to Remand.

4. Plaintiffs will not presumptively rest on this Motion to unerringly conclude that this Court's Order Dismissing with Leave to Amend is satisfied hereby. Given the primary purposes of this Motion, Plaintiffs respectfully request that this Court relieve them of Local Rule 4.01 and this Court's Order directing amendment by considering that granting this Motion truncates Count V and thereby amends the Complaint to eliminate the singular count serving as the basis for removal on the federal question. In other words, this Motion is filed wholly within the spirit of this Court's Order.¹

INTENDED PURPOSES OF THIS MOTION

5. The intended purposes of this Motion are two-fold:

A. To potentially eliminate further judicial labor by this Court, should it exercise its discretion in voluntarily dismissing Count V (federal question) on principles of pendent and supplemental jurisdiction. Such an Order would eliminate all federal-law claims leaving only pendent state court claims which may, in this

¹ Should this Court disagree, Plaintiffs respectfully request an additional fifteen (15) days to amend from the date that this Court files its Order on this Motion. In this regard, Plaintiffs readily acknowledge that, if remanded, the Complaint will necessarily need to be amended in state court. Plaintiffs will not be seeking to reallege a Section 1983 claim or another federal claim in this, or state court.

Court's discretion be properly remanded. In re: City of Mobile, 75 F. 3d 605, 607 (11th Cir. 1996). Accord. Behlan v. Merrill Lynch, 311 F. 3d 1087, 1095 (11th Cir. 2002);

B. Entering an Order of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(2) would satisfy 28 U.S.C. §1367(c)(3) "the district court has dismissed all claims over which it had original jurisdiction". Plaintiffs submit that this Court may also decline to exercise supplemental jurisdiction over the remaining state claims pursuant to 28 U.S.C. §1367(c)(1) and (2) and §1441(c). This is specifically addressed in Plaintiffs' Motion to Remand to be filed on or before November 16, 2012 and incorporated herein.

CERTIFICATION OF COUNSEL

The undersigned certifies that the Defendants' counsel, Joseph P. Patner, Esquire, has authorized the undersigned to represent to this Court that Defendants object to the specific relief requested.

WHEREFORE Plaintiffs respectfully request that this Court enter its Order of Voluntary Dismissal granting this Motion, and in doing so, amend its Order of October 30, 2012,² and consider this Motion in determining Plaintiffs Motion to Remand to be filed.

² In consonance with the scope and purpose of Fed. R. Civ. P. 1 and Local Rule 1.01. This Court has, of course, considerable discretion to reconsider and revise, its interlocutory order. Phelps v. Hamilton, 122 F.3d 1309, 1324 (10th Cir. 1997); Rimbart v. Eli Lilly & Co., 647 F.3d 1247, 1251 (10th Cir. 2011).

I CERTIFY that on November 15, 2012, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system. I further certify that a true and a correct copy of the foregoing has been furnished this day via email to:

(Joseph.Patner@stpete.org)
Joseph P. Patner, Esquire
Assistant City Attorney for Defendants
PO Box 2842
St. Petersburg, FL 33731
(P) 727-893-7401
(F) 727-892-5262

//s// Roy L. Glass
The Law Offices of Roy L. Glass, P.A.
5501 Central Ave.
St. Petersburg, FL 33710-8050
(P) (727) 384-8888
(F) (727) 345-3008
FBN: 210781
lroyglas@tampabay.rr.com

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

v.

CASE NO: 8:12-cv-2405-T-26TGW

CITY OF ST. PETERSBURG, FLORIDA,
a municipal corp., and St. Petersburg
Police Officer, MISTY SWANSON,
jointly and severally

Defendants.

_____ /

ORDER

UPON DUE CONSIDERATION, and so as not to delay the future course of this proceeding, it is **ORDERED AND ADJUDGED** that Defendants shall file an expedited response to Plaintiffs' Motion for Order of Voluntary Dismissal of Count V on or before **November 23, 2012**. Plaintiffs are relieved of the responsibility to replead their complaint until further order of the Court.¹

¹ The Court notes that Plaintiffs' counsel is under the mistaken impression that the Court dismissed the original complaint without prejudice and directed him to file an amended complaint. However, the Court's order is clear and unambiguous: Plaintiffs' counsel was directed to "replead their complaint" because, consistent with the cited Eleventh Circuit precedent, the complaint was a "quintessential shotgun pleading."

DONE AND ORDERED at Tampa, Florida, on November 15, 2012.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

vs.

Case No. 8:12-cv-02405-T-26TGW

CITY OF ST. PETERSBURG, FLORIDA
A Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
severally,

Defendants.

DEFENDANTS, CITY OF ST. PETERSBURG AND MISTY SWANSON'S RESPONSE TO
PLAINTIFFS' MOTION FOR DISMISSAL OF COUNT V

COMES NOW, the Defendants, City of St. Petersburg and Misty Swanson, pursuant to Court Order (Doc. 11) and files its Response to Plaintiffs' Motion (Doc. 10), and as grounds thereof would state:

1. The Plaintiffs in the Motion are asking this Court to reconsider its Order of Dismissal (Doc. 9) and to remand the matter back to State Court. The Defendants object to the Plaintiffs' requests.

RECONSIDERATION

2. The Defendants agree with the Plaintiffs that the District Courts are given substantial discretion in reconsidering their orders. See Pines Properties v. American Marine Bank, 2004 LEXIS 30888 (S.D. Fla. 2004). Typically, such a reconsideration would involve a change in the law, the facts, or to correct clear error. Id. Defendants would assert that none of those factors are present here.

3. Plaintiffs are requesting relief from this Court's Order (Doc. 9) so that the Plaintiffs may replead the Complaint dismissing Count V. The Plaintiffs can accomplish the same by complying with the Court's Order of Dismissal and abandoning Count V.

4. There is no change in fact or law which should relieve the Plaintiffs of the obligation to comply with appropriate pleading requirements and avoid the "shotgun pleading" of the original complaint.

REMAND

5. In conjunction with the Plaintiffs' request for reconsideration of the Order of Dismissal, Plaintiffs are seeking a remand of the matter back to State Court.

6. While the Plaintiffs state their request for a remand in the context of the voluntary dismissal of Count V, the Defendants object to a remand at this stage.

7. As this Court has twice noted, the Plaintiffs' complaint will need to be repleaded in its entirety because it is a shotgun pleading. (Doc. 11, n. 1) Inasmuch as the matter must be repleaded, it is premature to state whether or not a remand would be appropriate. For example, even if Count V is voluntarily dismissed, if the new complaint asserts allegations which are actually federal questions couched in state law claims, remand would be inappropriate. Hooper v. Albany International, 149 F. Supp. 2d 1315, 1320 (N.D. Ala. 2001), citing to Avco Corp. v. Aero Lodge, 390 U.S. 557 (1968).

8. Furthermore, even with the voluntary dismissal of County V and the subsequent filing of a well-pleaded complaint, this Court may still exercise, with discretion, supplemental jurisdiction pursuant to 28 U.S.C. §§ 1367. See New Rock Assets v. Preferred Entity, 101 F.3d 1492, 1504 (11th Cir. 1996). Once the Court has exercised jurisdiction over the

state claim, elimination of the federal claim does not deprive the Court of jurisdiction. Id. at 1505.

9. Since there is in fact no actual Motion for Remand, as well as no well-pled Complaint, it is premature if not impossible to see or address the grounds the Plaintiffs are relying upon for remand. The Defendants suggest that the appropriate procedure would be for the Plaintiffs to comply with the Court's Order (Doc. 9) and replead the Complaint. Should the Plaintiffs abandon all Federal claims the issue of remand can be addressed at that time upon Motion of the Plaintiffs.

WHEREAS, Defendants respectfully request that the Court at this time deny the Plaintiffs' Motion (Doc. 10).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 19, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Roy L. Glass, Esquire, at royglas@tampabay.rr.com.

JOHN C. WOLFE
CITY ATTORNEY

By: /s/Joseph P. Patner
JOSEPH P. PATNER
FBN: 831557
Attorney for Defendants
Assistant City Attorney
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Joseph.Patner@stpete.org

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,
vs.

Case No. 8:12-cv-02405-RAL-TGW

CITY OF SAINT PETERSBURG, FLORIDA,
a Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
severally,

Defendants.

PLAINTIFFS' MOTION TO REMAND

Plaintiffs file their Motion to Remand this case back to State Court and incorporate by reference Plaintiffs' just filed Motion for Order of Voluntary Dismissal of Count V, Section 1983 (Claims for Relief against Swanson and the City of Saint Petersburg) and, as additional and alternative grounds, state:

BACKGROUND

1. Plaintiffs filed their five (5) Count Complaint in State Court on October 5, 2012.
2. The Defendants timely filed their Notice of Removal on October 26, 2012 based upon Federal question jurisdiction (28 U.S.C 1331) applicable to Count V (42 U.S.C. §§1983, 1988). This Motion to Remand is timely filed today, *albeit*

originally intended to be filed on or before November 16, 2012.

3. Thereafter, this Court entered its Order October 30, 2012 denying Defendants' Motion to Dismiss and Motion for Summary Judgment but, *sua sponte*, dismissing the Complaint without prejudice and ordering the same be replead within fifteen (15) days.

4. Previous to this, on October 25, 2012, Plaintiffs filed their Notice of Intent to File a Motion to Remand.

5. Plaintiffs filed their Motion for Order of Voluntary Dismissal of Count V (Claims for Relief against Swanson and the City of Saint Petersburg) and Supporting Memorandum of Law on November 15, 2012. Granting this Motion would truncate Count V from the Complaint eliminating the singular count serving as the basis for removal on the federal question.

6. If this Court Order grants the Rule 41(a)(2) Motion for Order of Voluntary Dismissal of Count V, all federal-law claims are eliminated, leaving only pendent state court claims which may, in this Court's discretion, be properly remanded. In re: *City of Mobile*, 75 F.3d 605, 607 (11th Cir. 1996), Accord. *Behlan v. Merrill Lynch*, 311 F.3d 1087, 1095 (11th Cir. 2002). Again, Plaintiffs certify they hereafter will not be pursuing any federal claims in this, or state courts.

CONCLUSION

7. Plaintiffs submit that this Court may properly remand the case to the State Court on several independent bases:

- a. The doctrine of pendent/supplemental jurisdiction;
- b. 28 U.S.C. §1367(c)(3) in the event this Court grants Plaintiffs' Motion for a Voluntary Order of Dismissal of Count V (1983 claims constituting basis for original removal jurisdiction), in addition to §§1367 (c)(1) and (2); and
- c. 28 U.S.C. §1441(c).

Examination of each follows.

ANALYSIS ¹

Pendent/Supplemental Jurisdiction Doctrine

8. Should this Court grant Plaintiffs' Motion for Order of Voluntary Dismissal of Count V, then it will have eliminated the federal claim. With only the law claims remaining, this Court may, in its discretion, remand the Plaintiffs' state claims when doing so furthers the principles of judicial economy, convenience, fairness, and comity. *Carnegie - Mellon Univ. v. Cohill*, 484 U.S. 343, 345, 357, 98 L. Ed. 2d 720 (1988).

9. Plaintiffs readily acknowledge that Count V clearly and undisputedly presents an action "arising under" federal law. 28 U.S.C. § 1331. In the event this Court exercises its discretion in favor of an Order of Voluntary Dismissal of Count V, we are not suggesting that this Court would lack subject matter jurisdiction to

¹Plaintiffs do not question Defendants' propriety in removing on the basis of federal question jurisdiction. But, "[d]efendants' right to remove and plaintiffs' right to choose his forum are not on equal footing." *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994 (removal statutes should be strictly construed in favor of remand).

retain claims. It is clear that once properly removed this Court has discretion to retain jurisdiction over the State Court claims. *Behlen v. Merrill Lynch*, 311 F.3d 1087, 1095 (11th Cir. 2002). Rather, Plaintiffs urge this Court to exercise its supplemental jurisdiction to remand the pendent claims. See *Ramey v. Allstate Ins. Co.*, 70 F.3d 1086, 1088-89 (11th Cir. 2004). (Indicating this court does have the **authority and discretion** to refuse to exercise supplemental jurisdiction. Accordingly, this Court may properly exercise the doctrine of pendant jurisdiction and supplemental jurisdiction to remand this case to State Court. Also, it further appears to further the principals of judicial economy, convenience, fairness and comity to remand the pendent/supplement to State Court at this juncture; and this Court and Defendants' can rely on claims the caveat that Plaintiffs affirmatively represent that they are abandoning any and all federal claims involving this matter. Indeed, no prejudice to Defendants or to this Court's authority and jurisdiction results from remanding this case in favor of Plaintiffs traditional right to select the jurisdictional venue. See *Burns*, 31 F.3d 1095; *Ramey*, 70 F. 3d 1089.

Novel and Substantially Dominant Issue of State Law can Provide a Salient Statutory Basis Favoring Remand

10. Pursuant to 28 §§ 1367(c) (1) and (2) that this Court may decline to exercise supplemental jurisdiction if all original federal claims are eliminated. Without necessarily regurgitating the on point footnote 9 of *In re: City of Mobile*, 75 F. 3d 605 (11th Cir. 1996) applying the *Gibbs* standard for comparing the state and

federal claims “in terms of proof, scope of the issues raised, or the comprehensiveness of the remedy sought.” Here there are sovereign immunity caps of law; there are “pervasive differences in both the standards and elements of proof” between state and federal claims, among others. Moreover, novel issues of state law focus on whether Plaintiffs’ Golden Retriever, “Boomer,” is more than simple property in the eyes of the common law. Plaintiffs seek the sentimental loss of their pet – a family member – including grief, which Plaintiffs actually suffer due to the Defendants senseless killing of their dog, Boomer.

11 . Suffice it to state without writing an entire brief on the subject, that this novel issue of state law substantially dominates over the independent and completely ancillary Section 1983 claim. And, as alleged, the facts present certainly more than a “plausible” basis for seeking change in Florida law recognizing these heretofore rarely recognized elements of damages. Recent out-of-state cases such as *Medlen v. Strickland*, 2001 WL 5247375, (Tex. App. Nov. 3, 2011) have recognized recovery of “special value” from the attachment of the owners for their dog deciding that they could recover “sentimental or intrinsic value” concluding the special value of “man’s best friend” should be protected. Florida law has been trending in this same direction. *Kirksey v. Jernigan*, 45 So.2d 188 (Fla. 1950); *La Porte v. Assoc. Independents, Inc.*, 163 So. 2d 267 (Fla. 1964); *Levine v. Knowles*, 197 So.2d 329 (Fla. 3d DCA 1967); *Animal Hosp., Inc. v. Wills*, 360 So. 2d 37 (Fla. 3d DCA 1978); *Johnson v. Wander*, 592 So. 2d 1225 (Fla. 3d DCA

1992)

12. Accordingly, this Court may exercise its broad discretion in determining that this case should be remanded under § § 1367 (c)(1) and (2) as a novel issue of state law substantially predominates over the separate and independent Section 1983 claim.

13 Remand is appropriate “[i]f the federal claim, while plausible, is not really the plaintiff’s main mission; that it is only an incident or adjunct of the state claim and that the state claim is the crux of the action.” *Moore v. DeBiase*, 766 F. Supp. 1311, 1319 (D.N.J. 1991). Indeed, in *Gibbs*, 383 U.S. at 726, 86 S.Ct. at 1139, the United States Supreme Court counseled that “[n]eedless decisions of state law should be avoided (by federal court) both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable (state) law.”

Separate and Independent Federal Claim

14. Again, this Court may remand all matters in which state law predominates. The 1983 claim (Count V) is not really these Plaintiffs’ main mission, a change in Florida law is sought in good faith. The federal claim is only an incident or adjunct of the state claim. The state claim is the crux of this action. *Id. Moore* at 1391 quoting 28 U.S.C.A. § 1441 Commentary (West Supp. 1991). In analyzing Section 1367 (a)(1)(2), *supra*, it would seemingly equally apply here thus, redundant argument appears unnecessary.

15. Predictably, the Defendants will contend that no separate and independent cause of action exists and urge this Court to conclude that Section 1441(c) is inappropriate. In re: *City of Mobile*, 75 F.3d at 608. But, a simple examination of the state causes of action and the elements of proof compared to the Count V 1983 statement of claim reveal that while all claims are based on a common event or transaction (the senseless killing of Boomer) the causes asserted are not the result of a “single wrong.” Here, the “wrongs” include distinguishable independent acts which are loath to give rise to liability, to-wit: e.g. City’s ratification of prior dog shootings, established policies affording law enforcement officers unbridled discretion in the use of deadly force against companion pets, lack of non-lethal animal restraints, and inadequate police animal control training, among others. See, also, *Gibbs, supra*. Accordingly, 28 U.S.C 1441(c) is a proper basis for remand of this case.

Plaintiffs’ Declaration

Perceived express or implied arguments to the contrary, Plaintiffs state, beyond cajole, they no longer wish to pursue Section 1983 or any other federal claim in this or any other tribunal, period. Ordering voluntary dismissal of the singular federal claim serves as a clear, practical, and proper means supporting remand. Rule 41(a)(2); 28 U.S.C. §1441 (c); or, alternatively, under any or all of

the bases advanced in remanding this to the state court.²

Certification of Counsel

Defendants' attorney, Joseph Patner, Esquire, objects to this Motion.

WHEREFORE, Plaintiffs respectfully request this Court remand.

I CERTIFY that on November 19, 2012, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system. I further certify that a true and a correct copy of the foregoing has been furnished this day via email to:

(Joseph.Patner@stpete.org)
Joseph P. Patner, Esquire
Assistant City Attorney for Defendants
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//s// Roy L. Glass
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² Thank you for this Court's Order of November 17, 2012, graciously relieving Plaintiffs of the responsibility to "**replead**" their complaint until further order of this Court. *In our genuine efforts to say what we think is right, we miss the obvious.* Derived from "Missing the Obvious" by Rev. Raymond C. Nolan, copyright @ 2011.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

v.

CASE NO: 8:12-cv-2405-T-26TGW

CITY OF SAINT PETERSBURG, FLORIDA,
and MISTY SWANSON,

Defendants.

ORDER

Upon due and careful consideration of the procedural history of this case, together with the parties' recent submissions, it is ordered and adjudged that Plaintiffs' Motion for Order of Voluntary Dismissal of Count V (Dkt. 10) is denied. Upon further reflection, the Court directs Plaintiffs to file a repleaded complaint on or before November 23, 2012, in which they are free to eliminate their federal cause of action under 42 U.S.C. § 1983. If they do so, they may simultaneously file a renewed motion to remand based on the same arguments raised in their pending motion to remand.¹ In light of this determination, Plaintiffs' pending Motion to Remand (Dkt. 13) is denied without prejudice as moot.

¹ Plaintiffs' counsel is under the mistaken impression that he had until November 26, 2012, within which to file a motion to remand. Contrary to Plaintiffs' counsel's understanding, the notice of removal was filed with this Court on October 24, 2012, and not October 26, 2012. See docket 1. Consequently, any renewed motion to remand must be filed within thirty (30) days of October 24, 2012, or no later than Friday, November 23, 2012.

Defendants shall file a response to Plaintiffs' repleaded complaint within ten (10) days of service. If Plaintiffs file a renewed motion to remand, Defendants shall file an expedited response to the renewed motion within ten (10) days of service.

DONE AND ORDERED at Tampa, Florida, on November 20, 2012.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CASE NO. 12-12047-CI-19**

**LAUREN RACHEL GLASS and
ROY L. GLASS**

Plaintiffs,

v.

**CITY OF SAINT PETERSBURG, FLORIDA,
A Florida Municipal Corporation, and
Saint Petersburg Police Officer, MISTY SWANSON,**

Defendants.

**REPLEAD & AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs, **LAUREN RACHEL GLASS and ROY L. GLASS**, sue, **CITY OF SAINT PETERSBURG, FLORIDA and MISTY SWANSON**, and in conformance with United States Middle District Court of Florida Order of November 20, 2012(dkt 14)(case: 8:12-cv-0245 on removal), serves and files this Replead & Amended Complaint, saying:

NATURE OF ACTION

1. This is an action for damages within the jurisdiction of this Court in excess of fifteen thousand dollars (\$15,000.00) exclusive of interest, costs, and attorney fees.
2. Plaintiffs bring this action for claims of trespass to chattel; conversion; animal cruelty in violation of Fla. Stat. Section 828.12; intentional or reckless

infliction of emotional distress by Defendant, SWANSON, who acted in complete disregard for the Plaintiffs' rights when SWANSON intentionally, unjustifiably, and senselessly shot and killed the Plaintiffs' twelve (12) year old Golden Retriever, "BOOMER," on October 2, 2011; and, Defendants jointly and severally for negligence proximately causing damages to Plaintiffs.

PARTIES, JURISDICTION, AND VENUE

3. At all times material hereto, Plaintiffs, **LAUREN RACHEL GLASS and ROY L. GLASS**, their children, and BOOMER were residents of the City of Saint Petersburg, Pinellas County, Florida.

4. Upon information and belief, Defendant, **MISTY SWANSON**, (hereinafter, "**SWANSON**,") is, and at all times material hereto was, a resident of Pinellas County, Florida.

5. Jurisdiction is proper in this Court pursuant to Section 26.012, Fla. Stat.

6. Venue is proper in that the events that form the basis for the causes of action occurred in the City of Saint Petersburg, Pinellas County, Florida.

7. Now deceased, approximately twelve (12) year old male, AKC registered Golden Retriever, BOOMER, is, and all times relevant herein, was, regarded by the Plaintiffs and their family as their sentient personality, and immediate family member. Photos of Boomer are attached hereto as an Exhibit.

8. The City of Saint Petersburg, Florida, is a municipal corporation organized under the laws of the State of Florida. It operates the Saint Petersburg

Police Department, the entity for which **SWANSON** worked as a police officer during the incident complained of.

9. Defendant, **SWANSON**, is, and at all germane times was, an employee and agent of the City of Saint Petersburg Police Department acting within the scope of her employment. She is being sued in her personal and official capacities.

10. On or about November 21, 2011, the City of Saint Petersburg was served with a Notice of Claim pursuant to Section 768.26(6) Fla. Stat. More than six (6) months have elapsed since Notice was provided to the City, and all state imposed conditions precedent have either been performed or satisfied.

GENERAL ALLEGATIONS¹
(The Human-Animal Bond)

11. The human-animal bond presents a fundamental property and/or liberty interest protected under the state constitution.

¹ It is with much gratitude that the information in paragraphs 12-24 was graciously provided by notable animal rights attorney Adam P. Karp, Esquire, of Bellingham, Washington.

12. The American Veterinary Medical Association summarized the findings from a 2006 survey of 50,000 companion animal guardians, which revealed that “[most] people consider their pets to be family members or companions, not property. ... The statistics reveal that almost all pet owners feel a strong human-animal bond.” *Human-Animal Bond Boosts Spending on Veterinary Care*, JAVMA News, Jan. 1, 2008, <http://www.avma.org/onlnews/javma/jan08/080101a.asp>. According to the survey, 49.7 percent of guardians viewed their companion animals as “family,” while another 48.2 percent considered them “companions.” *Id.* Only 2.1 percent of those surveyed viewed their companion animals as property. *Id.* This change in attitude has developed over the last 30 years, evidencing a major shift in the public’s attitude toward companion animals. *Id.* There are over 150 million cats and dogs in this country living with humans in homes - one for every two Americans. *Id.*; see also William C. Root, “*Man’s Best Friend::Property or Family Member? An examination of the Legal Classification of Companion animals and its Impact on Damages Recoverable for their Wrongful Death or Injury*,” 47 Vill. L. Rev. 423, 423 (2002).

13. Recent studies show that 45 percent of dog owners take their dogs on vacation: more than half the companion animal owners would prefer a dog or a cat to a human if they were stranded on a deserted island; and 50 percent of companion animal owners would be “very likely” to risk their lives to save their companion animals, while another 33 percent would be “somewhat likely” to put their own lives in danger to save their companion animals. *Id.* In addition to the

personal value of companionship that animals offer, studies over the last two decades have confirmed the health benefits derived from human-animal companion relationships.

14. In 1975, the National Institutes of Health commissioned research entitled "The Human Health Responsibilities of Veterinarians," which was the first official recognition of the triangular interrelationships among people, their veterinarians, and their pets (www.argusinstitute.colostate.edu/history.htm).

15. In 1999, three organizations (the American Veterinary Medical Association, the American Association of Animal Hospitals, and the Association of American Veterinary Medical Colleges) commissioned an economic study, a significant portion of which addressed the human-animal bond in depth. The study concluded that, "in veterinary practice, recognition of the human-animal bond is an important determinant of successful practice" (www.argusinstitute.colostate.edu/history.htm).

16. These above examples demonstrate that the bond between a companion animal and a human animal is real and capable of empirical study and analysis. In addition, the human-animal bond is recognized to have financial business implications as well as personal emotional influence.

17. Research goes further in the study of this bond. We might anticipate and expect that scientists involved in laboratory animal research remain emotionally distant from their subjects, if for no other reason than self-protection. However, the Institute for Laboratory Animal Research Journal in 2002 devoted an entire issue to the *Implications of Human-Animal Interactions and Bonds in the*

Laboratory, ILAR Journal Vol. 43 (1) 2001. Kathryn Bayne, D.V.M., reports in her article, *Development of the Human-Research Animal Bond and its Impact on Animal Well-Being* that the bond between animal and human is based on affection and/or respect:

In the research environment, it is not uncommon for a bond to develop between the investigator, veterinarian, and/or animal care technicians and the animals with which they work . . . Circumstances that foster the formation of these bonds include the close and frequent contact between the researchers and their animals, . . . the dependency of the animals on the animal care staff for their daily needs . . .

18. Dr. Bayne also notes that special bonds can form with certain animals. “A strong contributing factor to the development of a bond is commitment to the animal,” in caring for the animal, recognizing the animal’s individuality, training the animal, and talking to the animal (http://dels.nas.edu/ilar_n/ilarjournal/43_1/Development.shtml).

19. In fact, a 2001 American Animal Hospital Association survey reported that 44 percent of pet owners would spend \$3000 or more to save their pet’s life, and 21 percent would travel 1000 miles or more to obtain specialty care for their pet. A Pfizer Animal Health/Gallup Organization Dog Owner survey reports that more than 75 percent of pet owners say that their dog’s health is as important to them as their own (<http://www.wargusinstitute.colostate.edu/hab.htm>). These kinds of owner attitudes reflect that owners are willing to demonstrate behaviorally that they believe their relationship with their dog is one-of-a-kind.

20. This relationship between a companion animal and a human animal is bidirectional. Tannenbaum describes this as a relationship that benefits both parties and is mutually voluntary (*The Health Benefits of Pets*. NIH Technology Assess Statement Online 1989 Sep 10-11). From the time a person brings an animal into his/her household, the two interact with and affect each other. The training that the person provides, caring for the dog's daily needs, taking the dog with her to work and on outings, talking with the dog - all serve to strengthen the bond bi-directionally. The more attention an owner gives to a dog, the more likely that dog is to communicate behaviorally in response. This two-way interaction will mold itself into a personalized, unique relationship, and the relationship has the potential to grow with each communication.

21. As the bond is strengthened, so is the potential for significant grief when that bond is broken. "During a person's experience with a companion animal, the depth of attachment grows, deepening the experience of loss when the animal dies" (*Grief Following Death of a Companion Animal*, by Messam, Zasloff, Mader-Weidne, Hendrie, & Hart, <http://the-digital-library.com/purdue.pdf>). Grief after pet loss is not as openly acknowledged as grief after the death of a human companion. As a result, the grieving person may receive inadequate support in their grieving and may feel isolated, which can increase the recovery period. *Id.* A study performed by the University of California, Davis School of Veterinary

Medicine, and published in 2005, reports that in highly attached care givers, 50 percent were still grieving after one year. *Id.*

22. There is a wealth of popular books available on the topic of pet loss. In addition, the Association for Death Education and Counseling (ADEC), the National Hospice and Palliative Care Organization (NHPCO), and the Hospice Foundation of America (organizations designed to provide care for humans) all recognize pet loss as a valid form of grief, yet it is still considered disenfranchised grief. In fact, the entire April 2007 issue of ADEC's *The Forum* was dedicated to pet loss. The Association for Pet Loss and Bereavement provides not only supportive information, but also a referral list of counselors who provide pet loss counseling.

23. The above allegations are illustrative only of the empirically and methodologically demonstrable human-animal bond. More recent and ongoing scientific evidence amplifies and further develops these tenets of long-standing scientific acceptance.

24. And, recent out-of-state cases such as *Medlen v. Strickland*, 2011 WL 5247375 (Tex.App.Nov. 3, 2011) have recognized recovery of "special value" (aka "sentimental or intrinsic value") derived from the attachment of the owners for their dog, protecting "man's best friend." Florida law is trending in this same direction. *Kirksey v. Jernigan*, 45 So.2d 188 (Fla. 1950); *LaPorte v. Assoc. Independents, Inc.*, 163 So.2d 267 (Fla. 1964); *Levine v. Knowles*, 197 So.2d

329(Fla. 3d DCA 1967); *Animal Hosp., Inc. v. Willis*, 360 So.2d 37(Fla.3d DCA 1978); and, *Johnson v. Wander*, 592 So.2d 1225(Fla. 3d DCA1992).

KILLING OF BOOMER

25. On Sunday, October 2, 2011, BOOMER allegedly attempted to mount a neighbor's dog during a walk and then after they went inside BOOMER stayed on the neighbor's porch and would not leave.

26. When the neighbor attempted to check BOOMER's tags to see whom he belonged to, he reportedly snapped at her.

27. It was between midnight on October 1, 2011 and 2:00 a.m. on October 2, 2011, while Plaintiffs were asleep, that **SWANSON** attempted to have BOOMER get in the back of her patrol car by giving him jerky. At this time BOOMER was reportedly friendly and cooperative.

28. Thereafter, when BOOMER gladly accepted the jerky, but refused to get into the back of **SWANSON's** police car, **SWANSON** grabbed his collar and BOOMER reportedly barred his teeth and started growling at her.

29. Before Officer **SWANSON** confronted BOOMER, she and a fellow officer, FOTOVAT, directed the complaining neighbor to go inside. Consequently, there were no independent witnesses to the killing of BOOMER except for those who heard the gunshot.

30. Then, in what can only be described as totally bizarre and inconsistent with his breed and temperament, BOOMER reportedly continued to

come towards **SWANSON**, growling and snapping, and ultimately lunging and jumping toward her face, at which time she pulled out her firearm and shot BOOMER in the chest.

31. After being shot, BOOMER cried loudly for up to 20 minutes until he bled out. A photograph of BOOMER's body is attached as an Exhibit.

32. The SPCA was contacted to pick up BOOMER's body, and reportedly arrived just after BOOMER died.

33. At no time did **SWANSON** attempt to use less-than-lethal or non-lethal force on Boomer, such as a Taser, baton, or OC spray, nor at any time prior to the shooting did she speak to, or attempt to solicit assistance from the SPCA or animal control in containing BOOMER.

34. Prior to BOOMER's shooting, neither **SWANSON**, nor any other SPPD officer or employee knew any information whether from animal control or law enforcement records, word of mouth, personal observation, or elsewhere, about BOOMER other than the complaining neighbor warning them about BOOMER not wanting someone to grab his collar.

35. On the date **SWANSON** killed BOOMER, BOOMER never injured or harmed **SWANSON**; never bit, injured, chased, or aggressively approached in a menacing fashion or apparent attitude of attack, and never bit or injured any other animal.

36. Later, in the morning of October 2, 2011, upon arising, Plaintiffs discovered that BOOMER had gotten out of the yard. Plaintiff, **ROY L. GLASS**, searched the neighborhood looking for BOOMER. Calls were placed to the SPCA and Humane Society in an effort to locate BOOMER, but proved to be non-productive. It was not until days later that Plaintiff, **ROY L. GLASS**, was contacted by the SPCA and learned that the SPPD had shot and killed BOOMER.

37. During the five-year-period (5) prior to BOOMER's killing, there were approximately twenty-five (25) animal shootings by the SPPD; seven (7) just in the year 2011 alone.

38. Upon information and belief, all such prior shootings did not result in any discipline of the SPPD officers or their agents.

39. Following the killing of Boomer, **SWANSON** faced no discipline from the SPPD, the shooting board predictably finding that the killing was "justified." Upon information and belief, prior animal shootings by the SPPD were also classified as "justified" and the involved officers faced no discipline from the SPPD, showing ratification by the City of Saint Petersburg of **SWANSON's** behavior.

40. The SPPD policy and/or custom on shooting animals, effective at the time of BOOMER's killing, authorized officers to elect to deploy lethal force and kill dogs within the officer's exclusive and unbridled discretion once deemed subjectively by the officer "to kill a...dangerous animal if it poses an imminent threat of death or great bodily harm to a person, when other means are impractical, and

then only with authorization from the supervisor, if time permits.” Indeed, non-deadly force and the use of less lethal weapons were to be employed “to deter an attack by an animal upon themselves or another person.”

41. Effective at the time of BOOMER’s death, the City of Saint Petersburg’s policy and/or custom on shooting animals authorized officer’s to use lethal force and to kill dogs within the officer’s exclusive and unbridled discretion once deemed subjectively by the officer as “vicious” or “dangerous” without defining either what constitutes “vicious” or “dangerous” and without setting forth any bounds in respect to state constitutional limits and the proper use of force to be used in dealing with one’s household pet, a loved member of the family.

42. Further, the City failed to train **SWANSON** in the reasonable limits on the use of force against domestic animals and pets given the previously alleged prevalence and foreseeability of officer’s encountering canines, the need for more or different training was so obvious, liability would likely result as to render the City of Saint Petersburg responsible for BOOMER’s negligently caused death and Plaintiffs’ resulting damages. Indeed, serving as further ratification for Officer **SWANSON’s** killing of Boomer, the Chief of Police, required further and additional training in the use of force against animals, yet, as of October 31, 2011, Officer **SWANSON** had not received such animal training.

43. The Plaintiffs lost the intrinsic value of BOOMER, as based on his unique qualities, characteristics, behaviors, personality, training, and bond, as well

as the loss of his utility, companionship, love, affection, protection, and solace. At the time of his death, BOOMER had no fair market value and could not be replaced or reproduced. Plaintiffs, and any reasonable person in their position, would not willingly have sold BOOMER at the time just prior to his death. At that moment, and thereafter, BOOMER had an immense intrinsic value to the Plaintiffs.

44. Boomer was a close family companion and had a special value, aiding Plaintiffs in their enjoyment of life, well-being, growth, development, and daily activities with family and friends.

45. Plaintiffs experienced emotional distress from the acts and omissions identified herein. Plaintiffs suffered sorrow, grief, and emotional distress to include observing the negative, deleterious impact the offense had on their children.

COUNT I
(SWANSON'S Trespass to Boomer)

46. Plaintiffs repeat and reallege paragraphs 1 through 45 as if fully set forth herein.

47. At all times material hereto, Plaintiffs were the owners and possessors of BOOMER. Plaintiffs had possession of BOOMER since he was whelped. BOOMER was a good natured companion dog and family pet.

48. At the time of BOOMER's death, he was Plaintiffs' companion. BOOMER was a family pet, known and enjoyed by them, and therefore irreplaceable in like and kind.

49. While Plaintiffs were sleeping in their home, less than a block away, **SWANSON** willfully, maliciously, needlessly, unjustifiably, in disregard for humanity for both the law and the property rights of private citizens, including the Plaintiffs, shot and killed BOOMER.

50. As a result of the foregoing, Plaintiffs have been and will continue to be damaged by the aforementioned actions. Plaintiffs are deprived of possession, use, enjoyment, protection, and companionship of their family dog, BOOMER, constituting a trespass to chattel.

51. A trespass to chattel (BOOMER) was done without proper legal authority or justification. There was no need for the application of lethal force because BOOMER was neither "vicious" nor "dangerous," and did not present a serious safety concern to the neighborhood.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT II
(SWANSON'S Conversion of Boomer)

52. Plaintiffs repeat and reallege paragraphs 1 through 45 as if fully set forth herein.

53. By shooting Plaintiffs' dog, and taking his life, Defendant, **SWANSON**, exercised unjustified and unnecessary dominion over Plaintiffs property and senseless interference with Plaintiffs' rights. **SWANSON's** acts constitute a conversion of Plaintiffs' property for which Plaintiffs are entitled to just compensation.

54. Defendant, **SWANSON**, permanently deprived Plaintiffs of their property and unlawfully interfered with their benefits they did, and could have gained from their loss of possession and ownership of BOOMER.

55. As a direct and proximate result of **SWANSON's** actions, Plaintiffs have in the past suffered, and will continue to suffer damages, including, but not limited to, sentimental and intrinsic value, grief, mental anguish, emotional distress, and loss of companionship and protection.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT III
(SWANSON'S Animal Cruelty in Violation of Fla. Stat. Section 828.12)

56. Plaintiffs repeat and reallege paragraphs 1 through 45 as if fully set forth herein.

57. The killing of BOOMER was done intentionally and willfully.

58. Defendant **SWANSON's** action was an intentional wrongful act without legal justification and was done in reckless disregard of the Plaintiffs' rights, and therefore in violation of Section 828.12, Fla. Stat.

59. By reason of the foregoing and as a direct and proximate result thereof, Plaintiffs have suffered damages as previously set forth herein.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT IV
(SWANSON'S Intentional and Reckless Infliction of Emotional Distress)

60. Plaintiffs repeat and reallege paragraphs 1 through 45, 49 as if fully set forth herein.

61. Defendant **SWANSON's** shooting and killing of BOOMER was without good cause, justification, or necessity.

62. Defendant **SWANSON's** actions were intentional and outrageous, and in complete disregard for the Plaintiffs' rights.

63. Defendant **SWANSON** knew, or should have known, that her actions would result in severe emotional distress to the Plaintiffs.

64. As a direct and proximate result of Defendant **SWANSON's** actions, Plaintiffs have in the past suffered, and will continue to suffer damages, including but not limited to, sentimental or intrinsic value, mental anguish, emotional distress, and loss of protection and companionship of BOOMER.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT V
(Negligence Claims for Relief against SWANSON and the CITY)

65. Plaintiffs repeat and reallege Paragraphs 1-45, 54 and 63, as if fully set forth herein.

66. On October 2, 2012, Defendants each had the duty, or assumed the duty, to use reasonable care in the encounter and handling of domestic pets in general and Plaintiffs' dog, "Boomer," in particular.

67. Defendant SWANSON breached her duty of reasonable care and was negligent: in failing to heed prior warning that "Boomer" resisted having his collar grabbed or used to control him; in failing to contact Animal Control to identify "Boomer's" owners by licensure tag clearly attached to his collar and contacting them to secure their dog, then less than a block away from Plaintiffs' home; in failing to contact Animal Control to intervene and await their arrival to take "Boomer" into custody; forcing "Boomer," a then friendly and docile dog accepting dog treats, and showing no aggressive behavior toward her or others, into the rear of her police car thereby provoking "Boomer" to resist; unnecessarily using deadly force by shooting "Boomer" instead of using non-lethal means to either restrain him or simply release him to go home as he would have eventually done; using deadly

force but, in doing so, negligently and indifferently allowing "Boomer" to bleed-out from the gun shot wound over a period of approximately twenty(20) minutes instead of compassionately relieving him of his fear, pain and prolonged suffering; and, was otherwise negligent in the premises.

68. Defendant, **CITY OF SAINT PETERSBURG**, breached their duty of reasonable care and was negligent: in failing to adequately train its officers with respect to the handling of deadly force and animals; failing to adopt policies setting forth "scenarios" to consider involving animals and the potential use of firearms until after the killing of BOOMER; failing to adopt policies directing officers to contact Animal Control when dogs or other domestic animals are encountered; failing to equip officers with sufficient non-lethal animal restraints that more likely than not, had officers had such training (such as recognizing basic animal body language and the use of Tasers, batons, pepper spray, snares, and the officers own body posturing as a means to avoid the use of deadly force being administered and the equipment dispensed, would have avoided the shooting and death of BOOMER, and other citizens' companion pets; and, being otherwise negligent in the premises.

WHEREFORE, Plaintiffs pray for judgment against Defendants, **SWANSON** and the **CITY OF SAINT PETERSBURG**, jointly and severally, as follows:

A) For economic damages, representing the special sentimental and intrinsic value and loss of BOOMER;

- B) For special and general damages relating to the loss of BOOMER's utility;
 - C) Non-economic damages, including grief, emotional distress and loss of enjoyment of life;
 - D) Post judgment interest at the highest rate permitted by law;
 - F) For such other and further relief as the Court may deem just and proper,
- and for a trial by jury of all claims triable as a matter of right by a jury.

DATED this 21st day of November, 2012.

LAW OFFICES OF ROY L. GLASS, P.A.

/s/ Roy L. Glass
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lroyglass@tampabay.rr.co

I CERTIFY that on November 21, 2012, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system. I further certify that a true and correct copy of the foregoing has been furnished, as a result, by court email to:

Joseph.Patner@stpete.org

Assistant City Attorney for Defendants
PO Box 2842
St. Petersburg, Fl. 33731
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/s/ Roy L. Glass, Esquire, Plaintiffs' Attorney
lroyglas@tampabay.rr.com

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

vs. .

Case No. 8:12-cv-02405-RAL-TGW

CITY OF SAINT PETERSBURG, FLORIDA,
a Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
severally,

Defendants.

RENEWED AND AMENDED PLAINTIFFS' MOTION TO REMAND
(pursuant to this Court's Order of 11-20-12 (dkt 14))

Plaintiffs file this Renewed and Amended Motion and also renew and incorporate by reference Plaintiff's Replead Complaint and Motion for Order of Voluntary Dismissal of Count V, Section 1983 (Claims for Relief against Swanson and City of Saint Petersburg) and, as additional and alternative grounds, state::

BACKGROUND

1. Plaintiffs filed their five (5) Count Complaint in State Court on October 5, 2012 (dkt 2).
2. The Defendants timely filed their Notice of Removal on October 26, 2012 based upon Federal question jurisdiction (28 U.S.C. 1331) applicable to Count V (42 U.S.C. §§1983, 1988 [dkt 1]). This Renewed and Amended Motion to Remand

is timely filed today.

3. Thereafter, this Court entered its Order October 30, 2012 denying Defendants' Motion to Dismiss and Motion for Summary Judgment but, *sua sponte*, dismissing the Complaint without prejudice and ordering the same be replead within fifteen (15) days (dkt 9)

4. Previous to this, on October 25, 2012, Plaintiffs filed their Notice of Intent to File a Motion to Remand (dkt 4).

5. Plaintiffs filed their Motion for Order of Voluntary Dismissal of Count V (Claims for Relief against Swanson and the City of Saint Petersburg) and Supporting Memorandum of Law on November 15, 2012 (dkt 10,) renewing the same here. Plaintiffs' Replead Complaint eliminates the singular count which served as the basis for removal on the federal question and no other federal claims are asserted.

6. If this Court Order grants the Rule 41 (a)(2) Renewed Motion for Order of Voluntary Dismissal of all federal-law claims, only pendent state court claims remain which may, in this Court's discretion, be properly remanded. In re: *City of Mobile*, 75 F.3d 605, 607 (11th Cir. 1996), Accord. *Behlan v. Merrill Lynch*, 311 F.3d 1087, 1095 (11th Cir. 2002).

7. Plaintiffs have filed their Replead Complaint on even date herewith, eliminating the Section 1983 claim and have not asserted any other federal claims. Plaintiffs have not previously voluntarily dismissed for Count V (§1983) under Rule

41(a)(1) as that action would not qualify for remand under 28 USC §1347(c)(3).

Plaintiffs were precluded in voluntarily dismissing by Rule 41(a)(1)(A)(i) as

Defendants' Motion for Summary Judgment was pending (dkt 8).

CONCLUSION

8. Plaintiffs submit that this Court may properly remand the case to the State Court on several independent bases:

A. The doctrine of pendent/supplemental jurisdiction;

B. 28 U.S.C. §1367(c)(3) in the event this Court grants Plaintiffs' Renewed Motion for a Voluntary Order of Dismissal of Count V (1983 claims constituting basis for original removal jurisdiction), in addition to §§1367 (c) (1) and (2); and

C. Separate and Independent Federal Claim, 28 U.S.C. §1441 (c).

Examination of each follows.

ANALYSIS¹

Pendent/Supplemental Jurisdiction Doctrine

9. Should this Court grant Plaintiffs' Renewed Motion for Order of former Count V, then it will have eliminated the former federal claim. With only the state law

¹ Plaintiffs do not question Defendants' propriety in removing on the basis of federal question jurisdiction. But, "[d]efendants' right to remove and plaintiffs' right to choose his forum are not on equal footing." *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994) (removal statutes should be strictly construed in favor of remand, affording deference to fundamental principles of state sovereignty).

claims remaining, this Court may, in its discretion, remand the Plaintiffs' state claims when doing so furthers the principles of judicial economy, convenience, fairness, and comity. *Carnegie - Mellon Univ. v. Cohill*, 484 U.S. 343, 345, 357, 98 Ed. 2d 720 (1988).

10. Plaintiffs readily acknowledge that Count V clearly and indisputedly presented an action "arising under" federal law. 28 U.S.C. §1331. Now, it is no longer being asserted. In the event this Court exercises its discretion in favor of an order of voluntary dismissal of all federal claims, we are not suggesting that this court would lack subject matter jurisdiction to retain claims. It is clear that once properly removed this Court has discretion to retain jurisdiction over the State Court claims. *Behlan v. Merrill Lynch*, 311 F.3d 1087, 1095 (11th Cir. 2002). Rather, Plaintiffs urge this Court to exercise its supplemental jurisdiction to remand the pendent claims. See *Ramey v. Allstate Ins. Co.*, 70 F.3d 1086, 1088-89 (11th Cir. 2004), (indicating this court does have the authority and discretion to refuse to exercise supplemental jurisdiction). Accordingly, this Court may properly exercise the doctrine of pendant jurisdiction and supplemental jurisdiction to remand this case to State Court.

11. Also, it further appears to further the principals of judicial economy, convenience, fairness and comity to remand the pendent/supplemental claims to State Court at this juncture. The Replead Complaint abandons any federal question claims. Indeed no prejudice to Defendants or to this Court's authority and jurisdiction

results from remanding this case in favor of Plaintiffs' traditional right to select the jurisdictional venue. See *Burns*, 31 F.3d 1095; *Ramey*, 70 F.3d 1089.

Novel and Substantially Dominant Issue
of State Law can Provide a Salient Statutory Basis Favoring Remand

12. Pursuant to 28 §§ 1367(c)(1) and (2) this Court may decline to exercise supplemental jurisdiction if all original federal claims are eliminated. Without necessarily regurgitating the on-point footnote 9 of *In Re: City of Mobile*, 75 F.3d 605, (11th Cir. 1996) applying the Gibbs standard for comparing the state and federal claims "in terms of proof, scope of the issues raised, or the comprehensiveness of the remedy sought" supports remand here. Here there are sovereign immunity caps; there are "pervasive differences in both the standards and elements of proof" between state and federal claims, among others. Moreover, novel issues of state law focus on whether Plaintiffs' Golden Retriever, "Boomer," is more than simple property in the eyes of the common law. Plaintiffs seek the sentimental loss of their pet - a family member - including grief, which Plaintiffs actually suffer due to the Defendants senseless killing of their dog, Boomer.

13. Suffice it to state without writing an entire brief on the subject, that this novel issue of state law substantially dominates over the independent completely ancillary Section 1983 claim. And, as alleged, the facts present certainly more than a "plausible" basis for seeking change in Florida law recognizing these heretofore rarely recognized elements of damages. Recent out-of-state cases such as *Medlen v. Strickland*, 2001 WL 5247375 (Tex. App. Nov. 3, 2011) have recognized recovery

of "special value" from the attachment of the owners for their dog. The Texas court held plaintiffs could recover "sentimental or intrinsic value" finding that the special value of "man's best friend" should be protected. Florida law has been trending in this same direction. *Kirksey v. Jernigan*, 45 So.2d 188 (Fla. 1950); *La Porte v. Assoc. Independents, Inc.*, 163 So. 2d 67 (Fla. 1964); *Levine v. Knowles*, 197 So.2d 329 (Fla. 3d DCA 167); *Animal Hosp., Inc. V. Wills*, 360 So.2d 37 (Fla. 3d DCA 1978); *Johnson v. Wander*, 592 So.2d 1225 (Fla. 3d DCA1992).

14. Accordingly, this Court may exercise its broad discretion in determining that this case should be remanded under §§ 1367(c)(1) and (2) as a novel issue of state law substantially predominates over the separate and independent Section 1983 claim.

15. Remand is appropriate "[i]f the federal claim, while plausible, is not really the plaintiffs's main mission; that is only an incident or *adjunction of the state claim and that the state claim is the crux of the action.*" *Moore v. DeBiase*, 766 F.Supp. 1311, 1319 (D.N.J. 1991). Indeed, in *Gibbs*, 383 U.S. at 726, 86 S.Ct. At 1139, the United States Supreme Court counseled that "[n]eedless decisions of state law should be avoided (by federal court) both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable (state) law."

Separate and Independent Federal Claim No Longer Exists

16. Again, this Court may remand all matters in which state law

predominates. The abandoned 1983 claim was not really these Plaintiffs' main mission, a change in Florida law is sought in good faith. The federal claim was only an incident or adjunct of the state claim. The state claim is the crux of this action. *Id.* Moore at 1391 quoting 28 U.S.C.A. § 1441 Commentary (West Supp. 1991). In analyzing Section 1367(a)(1)(2), *supra*, the same considerations equally apply here thus, redundant argument appears unnecessary. Section 1441(c) is yet another basis to remand as all federal claims are abandoned in Plaintiffs' Replead Complaint.

17. As Plaintiffs request, ordering voluntary dismissal of all federal claims serves as a clear, practical, and proper means supporting remand, Rule 41(a)(2); 28 U.S.C. § 1441(c); or alternatively, under any or all of the bases advanced in remanding this to the state court.

18. The issue now is whether this Court, having "denied" Plaintiffs' Motion for Voluntary Dismissal (dkt 14), can nevertheless enter its disposing Order given the absence of the Section 1983 claim or any other federal question claims in Plaintiffs' Replead Complaint? Since the general presumption is that a "denial" is without prejudice unless otherwise stated, this Court retains the authority under Rule 41(a)(2), and upon Plaintiff's request, to dismiss the Section 1983 claim "...on terms that the court considers proper." See *Jones v. Caddo Parish Sch. Bd.*, 704 F.2d 206 (5th Cir. 1983) (necessity to examine the circumstances surrounding the dismissal to determine if it is, or was, without prejudice).

CERTIFICATION OF COUNSEL

Defendants' attorney, Joseph Patner, Esquire, objects to this Motion.

WHEREFORE, Plaintiffs respectfully request this Court remand.

I certify that on November 21, 2012, I presented the foregoing to the Clerk of the Court for filing and uploading to the CM/ECF system. I further certify that a true and a correct copy of the foregoing has been furnished this day via email to:

(Joseph.Patner@stpete.org)
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//s// Roy L. Glass
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

**LAUREN RACHEL GLASS and
ROY L. GLASS**

Case No. 8:12-cv-0245-RAL-TGW

Plaintiffs,

v.

**CITY OF SAINT PETERSBURG, FLORIDA,
A Florida Municipal Corporation, and
Saint Petersburg Police Officer, MISTY SWANSON,**

Defendants.

**REPLEAD & AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs, **LAUREN RACHEL GLASS and ROY L. GLASS**, sue, **CITY OF SAINT PETERSBURG, FLORIDA and MISTY SWANSON**, and in conformance with United States Middle District Court of Florida Order of November 20, 2012(dkt 14) serves and files this Replead & Amended Complaint, saying:

NATURE OF ACTION

1. This is an action for damages within the jurisdiction of this Court in excess of fifteen thousand dollars (\$15,000.00) exclusive of interest, costs, and attorney fees.

2. Plaintiffs bring this action for claims of trespass to chattel; conversion; animal cruelty in violation of Fla. Stat. Section 828.12; intentional or reckless

infliction of emotional distress by Defendant, SWANSON, who acted in complete disregard for the Plaintiffs' rights when SWANSON intentionally, unjustifiably, and senselessly shot and killed the Plaintiffs' twelve (12) year old Golden Retriever, "BOOMER," on October 2, 2011; and, Defendants jointly and severally for negligence proximately causing damages to Plaintiffs.

PARTIES, JURISDICTION, AND VENUE

3. At all times material hereto, Plaintiffs, **LAUREN RACHEL GLASS** and **ROY L. GLASS**, their children, and BOOMER were residents of the City of Saint Petersburg, Pinellas County, Florida.

4. Upon information and belief, Defendant, **MISTY SWANSON**, (hereinafter, "**SWANSON**,") is, and at all times material hereto was, a resident of Pinellas County, Florida.

5. Jurisdiction is proper in this Court pursuant to Section 26.012, Fla. Stat.

6. Venue is proper in that the events that form the basis for the causes of action occurred in the City of Saint Petersburg, Pinellas County, Florida.

7. Now deceased, approximately twelve (12) year old male, AKC registered Golden Retriever, BOOMER, is, and all times relevant herein, was, regarded by the Plaintiffs and their family as their sentient personality, and immediate family member. Photos of Boomer are attached hereto as an Exhibit.

8. The City of Saint Petersburg, Florida, is a municipal corporation organized under the laws of the State of Florida. It operates the Saint Petersburg

Police Department, the entity for which **SWANSON** worked as a police officer during the incident complained of.

9. Defendant, **SWANSON**, is, and at all germane times was, an employee and agent of the City of Saint Petersburg Police Department acting within the scope of her employment. She is being sued in her personal and official capacities.

10. On or about November 21, 2011, the City of Saint Petersburg was served with a Notice of Claim pursuant to Section 768.26(6) Fla. Stat. More than six (6) months have elapsed since Notice was provided to the City, and all state imposed conditions precedent have either been performed or satisfied.

GENERAL ALLEGATIONS¹
(The Human-Animal Bond)

11. The human-animal bond presents a fundamental property and/or liberty interest protected under the state constitution.

¹ It is with much gratitude that the information in paragraphs 12-24 was graciously provided by notable animal rights attorney Adam P. Karp, Esquire, of Bellingham, Washington.

12. The American Veterinary Medical Association summarized the findings from a 2006 survey of 50,000 companion animal guardians, which revealed that “[most] people consider their pets to be family members or companions, not property. ... The statistics reveal that almost all pet owners feel a strong human-animal bond.” *Human-Animal Bond Boosts Spending on Veterinary Care*, JAVMA News, Jan. 1, 2008, <http://www.avma.org/onlnews/javma/jan08/080101a.asp>. According to the survey, 49.7 percent of guardians viewed their companion animals as “family,” while another 48.2 percent considered them “companions.” *Id.* Only 2.1 percent of those surveyed viewed their companion animals as property. *Id.* This change in attitude has developed over the last 30 years, evidencing a major shift in the public’s attitude toward companion animals. *Id.* There are over 150 million cats and dogs in this country living with humans in homes - one for every two Americans. *Id.*; see also William C. Root, “*Man’s Best Friend::Property or Family Member? An examination of the Legal Classification of Companion animals and its Impact on Damages Recoverable for their Wrongful Death or Injury*,” 47 Vill. L. Rev. 423, 423 (2002).

13. Recent studies show that 45 percent of dog owners take their dogs on vacation: more than half the companion animal owners would prefer a dog or a cat to a human if they were stranded on a deserted island; and 50 percent of companion animal owners would be “very likely” to risk their lives to save their companion animals, while another 33 percent would be “somewhat likely” to put their own lives in danger to save their companion animals. *Id.* In addition to the

personal value of companionship that animals offer, studies over the last two decades have confirmed the health benefits derived from human-animal companion relationships.

14. In 1975, the National Institutes of Health commissioned research entitled "The Human Health Responsibilities of Veterinarians," which was the first official recognition of the triangular interrelationships among people, their veterinarians, and their pets (www.argusinstitute.colostate.edu/history.htm).

15. In 1999, three organizations (the American Veterinary Medical Association, the American Association of Animal Hospitals, and the Association of American Veterinary Medical Colleges) commissioned an economic study, a significant portion of which addressed the human-animal bond in depth. The study concluded that, "in veterinary practice, recognition of the human-animal bond is an important determinant of successful practice" (www.argusinstitute.colostate.edu/history.htm).

16. These above examples demonstrate that the bond between a companion animal and a human animal is real and capable of empirical study and analysis. In addition, the human-animal bond is recognized to have financial business implications as well as personal emotional influence.

17. Research goes further in the study of this bond. We might anticipate and expect that scientists involved in laboratory animal research remain emotionally distant from their subjects, if for no other reason than self-protection. However, the Institute for Laboratory Animal Research Journal in 2002 devoted an entire issue to the *Implications of Human-Animal Interactions and Bonds in the*

Laboratory, ILAR Journal Vol. 43 (1) 2001. Kathryn Bayne, D.V.M., reports in her article, *Development of the Human-Research Animal Bond and its Impact on Animal Well-Being* that the bond between animal and human is based on affection and/or respect:

In the research environment, it is not uncommon for a bond to develop between the investigator, veterinarian, and/or animal care technicians and the animals with which they work . . . Circumstances that foster the formation of these bonds include the close and frequent contact between the researchers and their animals, . . . the dependency of the animals on the animal care staff for their daily needs . . .

18. Dr. Bayne also notes that special bonds can form with certain animals. “A strong contributing factor to the development of a bond is commitment to the animal,” in caring for the animal, recognizing the animal’s individuality, training the animal, and talking to the animal (http://dels.nas.edu/ilar_n/ilarjournal/43_1/Development.shtml).

19. In fact, a 2001 American Animal Hospital Association survey reported that 44 percent of pet owners would spend \$3000 or more to save their pet’s life, and 21 percent would travel 1000 miles or more to obtain specialty care for their pet. A Pfizer Animal Health/Gallup Organization Dog Owner survey reports that more than 75 percent of pet owners say that their dog’s health is as important to them as their own (<http://www.wargusinstitute.colostate.edu/hab.htm>). These kinds of owner attitudes reflect that owners are willing to demonstrate behaviorally that they believe their relationship with their dog is one-of-a-kind.

20. This relationship between a companion animal and a human animal is bidirectional. Tannenbaum describes this as a relationship that benefits both parties and is mutually voluntary (*The Health Benefits of Pets*. NIH Technology Assess Statement Online 1989 Sep 10-11). From the time a person brings an animal into his/her household, the two interact with and affect each other. The training that the person provides, caring for the dog's daily needs, taking the dog with her to work and on outings, talking with the dog - all serve to strengthen the bond bi-directionally. The more attention an owner gives to a dog, the more likely that dog is to communicate behaviorally in response. This two-way interaction will mold itself into a personalized, unique relationship, and the relationship has the potential to grow with each communication.

21. As the bond is strengthened, so is the potential for significant grief when that bond is broken. "During a person's experience with a companion animal, the depth of attachment grows, deepening the experience of loss when the animal dies" (*Grief Following Death of a Companion Animal*, by Messam, Zasloff, Mader-Weidne, Hendrie, & Hart, <http://the-digital-library.com/purdue.pdf>). Grief after pet loss is not as openly acknowledged as grief after the death of a human companion. As a result, the grieving person may receive inadequate support in their grieving and may feel isolated, which can increase the recovery period. *Id.* A study performed by the University of California, Davis School of Veterinary

Medicine, and published in 2005, reports that in highly attached care givers, 50 percent were still grieving after one year. *Id.*

22. There is a wealth of popular books available on the topic of pet loss. In addition, the Association for Death Education and Counseling (ADEC), the National Hospice and Palliative Care Organization (NHPCO), and the Hospice Foundation of America (organizations designed to provide care for humans) all recognize pet loss as a valid form of grief, yet it is still considered disenfranchised grief. In fact, the entire April 2007 issue of ADEC's *The Forum* was dedicated to pet loss. The Association for Pet Loss and Bereavement provides not only supportive information, but also a referral list of counselors who provide pet loss counseling.

23. The above allegations are illustrative only of the empirically and methodologically demonstrable human-animal bond. More recent and ongoing scientific evidence amplifies and further develops these tenets of long-standing scientific acceptance.

24. And, recent out-of-state cases such as *Medlen v. Strickland*, 2011 WL 5247375 (Tex.App.Nov. 3, 2011) have recognized recovery of "special value" (aka "sentimental or intrinsic value") derived from the attachment of the owners for their dog, protecting "man's best friend." Florida law is trending in this same direction. *Kirksey v. Jernigan*, 45 So.2d 188 (Fla. 1950); *LaPorte v. Assoc. Independents, Inc.*, 163 So.2d 267 (Fla. 1964); *Levine v. Knowles*, 197 So.2d

329(Fla. 3d DCA 1967); *Animal Hosp., Inc. v. Willis*, 360 So.2d 37(Fla.3d DCA 1978); and, *Johnson v. Wander*, 592 So.2d 1225(Fla. 3d DCA1992).

KILLING OF BOOMER

25. On Sunday, October 2, 2011, BOOMER allegedly attempted to mount a neighbor's dog during a walk and then after they went inside BOOMER stayed on the neighbor's porch and would not leave.

26. When the neighbor attempted to check BOOMER's tags to see whom he belonged to, he reportedly snapped at her.

27. It was between midnight on October 1, 2011 and 2:00 a.m. on October 2, 2011, while Plaintiffs were asleep, that **SWANSON** attempted to have BOOMER get in the back of her patrol car by giving him jerky. At this time BOOMER was reportedly friendly and cooperative.

28. Thereafter, when BOOMER gladly accepted the jerky, but refused to get into the back of **SWANSON's** police car, **SWANSON** grabbed his collar and BOOMER reportedly barred his teeth and started growling at her.

29. Before Officer **SWANSON** confronted BOOMER, she and a fellow officer, FOTOVAT, directed the complaining neighbor to go inside. Consequently, there were no independent witnesses to the killing of BOOMER except for those who heard the gunshot.

30. Then, in what can only be described as totally bizarre and inconsistent with his breed and temperament, BOOMER reportedly continued to

come towards **SWANSON**, growling and snapping, and ultimately lunging and jumping toward her face, at which time she pulled out her firearm and shot BOOMER in the chest.

31. After being shot, BOOMER cried loudly for up to 20 minutes until he bled out. A photograph of BOOMER's body is attached as an Exhibit.

32. The SPCA was contacted to pick up BOOMER's body, and reportedly arrived just after BOOMER died.

33. At no time did **SWANSON** attempt to use less-than-lethal or non-lethal force on Boomer, such as a Taser, baton, or OC spray, nor at any time prior to the shooting did she speak to, or attempt to solicit assistance from the SPCA or animal control in containing BOOMER.

34. Prior to BOOMER's shooting, neither **SWANSON**, nor any other SPPD officer or employee knew any information whether from animal control or law enforcement records, word of mouth, personal observation, or elsewhere, about BOOMER other than the complaining neighbor warning them about BOOMER not wanting someone to grab his collar.

35. On the date **SWANSON** killed BOOMER, BOOMER never injured or harmed **SWANSON**; never bit, injured, chased, or aggressively approached in a menacing fashion or apparent attitude of attack, and never bit or injured any other animal.

36. Later, in the morning of October 2, 2011, upon arising, Plaintiffs discovered that BOOMER had gotten out of the yard. Plaintiff, **ROY L. GLASS**, searched the neighborhood looking for BOOMER. Calls were placed to the SPCA and Humane Society in an effort to locate BOOMER, but proved to be non-productive. It was not until days later that Plaintiff, **ROY L. GLASS**, was contacted by the SPCA and learned that the SPPD had shot and killed BOOMER.

37. During the five-year-period (5) prior to BOOMER's killing, there were approximately twenty-five (25) animal shootings by the SPPD; seven (7) just in the year 2011 alone.

38. Upon information and belief, all such prior shootings did not result in any discipline of the SPPD officers or their agents.

39. Following the killing of Boomer, **SWANSON** faced no discipline from the SPPD, the shooting board predictably finding that the killing was "justified." Upon information and belief, prior animal shootings by the SPPD were also classified as "justified" and the involved officers faced no discipline from the SPPD, showing ratification by the City of Saint Petersburg of **SWANSON's** behavior.

40. The SPPD policy and/or custom on shooting animals, effective at the time of BOOMER's killing, authorized officers to elect to deploy lethal force and kill dogs within the officer's exclusive and unbridled discretion once deemed subjectively by the officer "to kill a...dangerous animal if it poses an imminent threat of death or great bodily harm to a person, when other means are impractical, and

then only with authorization from the supervisor, if time permits.” Indeed, non-deadly force and the use of less lethal weapons were to be employed “to deter an attack by an animal upon themselves or another person.”

41. Effective at the time of BOOMER’s death, the City of Saint Petersburg’s policy and/or custom on shooting animals authorized officer’s to use lethal force and to kill dogs within the officer’s exclusive and unbridled discretion once deemed subjectively by the officer as “vicious” or “dangerous” without defining either what constitutes “vicious” or “dangerous” and without setting forth any bounds in respect to state constitutional limits and the proper use of force to be used in dealing with one’s household pet, a loved member of the family.

42. Further, the City failed to train **SWANSON** in the reasonable limits on the use of force against domestic animals and pets given the previously alleged prevalence and foreseeability of officer’s encountering canines, the need for more or different training was so obvious, liability would likely result as to render the City of Saint Petersburg responsible for BOOMER’s negligently caused death and Plaintiffs’ resulting damages. Indeed, serving as further ratification for Officer **SWANSON’s** killing of Boomer, the Chief of Police, required further and additional training in the use of force against animals, yet, as of October 31, 2011, Officer **SWANSON** had not received such animal training.

43. The Plaintiffs lost the intrinsic value of BOOMER, as based on his unique qualities, characteristics, behaviors, personality, training, and bond, as well

as the loss of his utility, companionship, love, affection, protection, and solace. At the time of his death, BOOMER had no fair market value and could not be replaced or reproduced. Plaintiffs, and any reasonable person in their position, would not willingly have sold BOOMER at the time just prior to his death. At that moment, and thereafter, BOOMER had an immense intrinsic value to the Plaintiffs.

44. Boomer was a close family companion and had a special value, aiding Plaintiffs in their enjoyment of life, well-being, growth, development, and daily activities with family and friends.

45. Plaintiffs experienced emotional distress from the acts and omissions identified herein. Plaintiffs suffered sorrow, grief, and emotional distress to include observing the negative, deleterious impact the offense had on their children.

COUNT I
(SWANSON'S Trespass to Boomer)

46. Plaintiffs repeat and reallege paragraphs 1 through 45 as if fully set forth herein.

47. At all times material hereto, Plaintiffs were the owners and possessors of BOOMER. Plaintiffs had possession of BOOMER since he was whelped. BOOMER was a good natured companion dog and family pet.

48. At the time of BOOMER's death, he was Plaintiffs' companion. BOOMER was a family pet, known and enjoyed by them, and therefore irreplaceable in like and kind.

49. While Plaintiffs were sleeping in their home, less than a block away, **SWANSON** willfully, maliciously, needlessly, unjustifiably, in disregard for humanity for both the law and the property rights of private citizens, including the Plaintiffs, shot and killed BOOMER.

50. As a result of the foregoing, Plaintiffs have been and will continue to be damaged by the aforementioned actions. Plaintiffs are deprived of possession, use, enjoyment, protection, and companionship of their family dog, BOOMER, constituting a trespass to chattel.

51. A trespass to chattel (BOOMER) was done without proper legal authority or justification. There was no need for the application of lethal force because BOOMER was neither "vicious" nor "dangerous," and did not present a serious safety concern to the neighborhood.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT II
(SWANSON'S Conversion of Boomer)

52. Plaintiffs repeat and reallege paragraphs 1 through 45 as if fully set forth herein.

53. By shooting Plaintiffs' dog, and taking his life, Defendant, **SWANSON**, exercised unjustified and unnecessary dominion over Plaintiffs property and senseless interference with Plaintiffs' rights. **SWANSON's** acts constitute a conversion of Plaintiffs' property for which Plaintiffs are entitled to just compensation.

54. Defendant, **SWANSON**, permanently deprived Plaintiffs of their property and unlawfully interfered with their benefits they did, and could have gained from their loss of possession and ownership of BOOMER.

55. As a direct and proximate result of **SWANSON's** actions, Plaintiffs have in the past suffered, and will continue to suffer damages, including, but not limited to, sentimental and intrinsic value, grief, mental anguish, emotional distress, and loss of companionship and protection.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT III
(SWANSON'S Animal Cruelty in Violation of Fla. Stat. Section 828.12)

56. Plaintiffs repeat and reallege paragraphs 1 through 45 as if fully set forth herein.

57. The killing of BOOMER was done intentionally and willfully.

58. Defendant **SWANSON's** action was an intentional wrongful act without legal justification and was done in reckless disregard of the Plaintiffs' rights, and therefore in violation of Section 828.12, Fla. Stat.

59. By reason of the foregoing and as a direct and proximate result thereof, Plaintiffs have suffered damages as previously set forth herein.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT IV
(SWANSON'S Intentional and Reckless Infliction of Emotional Distress)

60. Plaintiffs repeat and reallege paragraphs 1 through 45, 49 as if fully set forth herein.

61. Defendant **SWANSON's** shooting and killing of BOOMER was without good cause, justification, or necessity.

62. Defendant **SWANSON's** actions were intentional and outrageous, and in complete disregard for the Plaintiffs' rights.

63. Defendant **SWANSON** knew, or should have known, that her actions would result in severe emotional distress to the Plaintiffs.

64. As a direct and proximate result of Defendant **SWANSON's** actions, Plaintiffs have in the past suffered, and will continue to suffer damages, including but not limited to, sentimental or intrinsic value, mental anguish, emotional distress, and loss of protection and companionship of BOOMER.

WHEREFORE, Plaintiffs respectfully request compensatory damages, costs, and trial by jury.

COUNT V
(Negligence Claims for Relief against SWANSON and the CITY)

65. Plaintiffs repeat and reallege Paragraphs 1-45, 54 and 63, as if fully set forth herein.

66. On October 2, 2012, Defendants each had the duty, or assumed the duty, to use reasonable care in the encounter and handling of domestic pets in general and Plaintiffs' dog, "Boomer," in particular.

67. Defendant SWANSON breached her duty of reasonable care and was negligent: in failing to heed prior warning that "Boomer" resisted having his collar grabbed or used to control him; in failing to contact Animal Control to identify "Boomer's" owners by licensure tag clearly attached to his collar and contacting them to secure their dog, then less than a block away from Plaintiffs' home; in failing to contact Animal Control to intervene and await their arrival to take "Boomer" into custody; forcing "Boomer," a then friendly and docile dog accepting dog treats, and showing no aggressive behavior toward her or others, into the rear of her police car thereby provoking "Boomer" to resist; unnecessarily using deadly force by shooting "Boomer" instead of using non-lethal means to either restrain him or simply release him to go home as he would have eventually done; using deadly

force but, in doing so, negligently and indifferently allowing "Boomer" to bleed-out from the gun shot wound over a period of approximately twenty(20) minutes instead of compassionately relieving him of his fear, pain and prolonged suffering; and, was otherwise negligent in the premises.

68. Defendant, **CITY OF SAINT PETERSBURG**, breached their duty of reasonable care and was negligent: in failing to adequately train its officers with respect to the handling of deadly force and animals; failing to adopt policies setting forth "scenarios" to consider involving animals and the potential use of firearms until after the killing of BOOMER; failing to adopt policies directing officers to contact Animal Control when dogs or other domestic animals are encountered; failing to equip officers with sufficient non-lethal animal restraints that more likely than not, had officers had such training (such as recognizing basic animal body language and the use of Tasers, batons, pepper spray, snares, and the officers own body posturing as a means to avoid the use of deadly force being administered and the equipment dispensed, would have avoided the shooting and death of BOOMER, and other citizens' companion pets; and, being otherwise negligent in the premises.

WHEREFORE, Plaintiffs pray for judgment against Defendants, **SWANSON** and the **CITY OF SAINT PETERSBURG**, jointly and severally, as follows:

A) For economic damages, representing the special sentimental and intrinsic value and loss of BOOMER;

death of BOOMER, and other citizens' companion pets; and, being otherwise negligent in the premises.

WHEREFORE, Plaintiffs pray for judgment against Defendants, **SWANSON** and the **CITY OF SAINT PETERSBURG**, jointly and severally, as follows:

A) For economic damages, representing the special sentimental and intrinsic value and loss of BOOMER;

B) For special and general damages relating to the loss of BOOMER's utility;

C) Non-economic damages, including grief, emotional distress and loss of enjoyment of life;

D) Post judgment interest at the highest rate permitted by law;

F) For such other and further relief as the Court may deem just and proper, and for a trial by jury of all claims triable as a matter of right by a jury.

DATED this 23d day of November, 2012.

LAW OFFICES OF ROY L. GLASS, P.A.

/s/ Roy L. Glass
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I CERTIFY that on November 23, 2012, I presented the foregoing Restyled

Complaint to the Clerk of the Court for filing and uploading to the CM/ECF system. I further certify that a true and correct copy of the foregoing has been furnished, as a result, by court email to:

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

vs.

Case No. 8:12-cv-02405-T-26TGW

CITY OF ST. PETERSBURG, FLORIDA
A Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
severally,

Defendants.

**DEFENDANTS' CITY OF ST. PETERSBURG AND SWANSON SECOND
DISPOSITIVE MOTION TO DISMISS OR IN THE ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT AND MEMORANDUM OF LAW**

The Defendants, City of St. Petersburg and Swanson, pursuant to Court Order of November 20, 2012, (Doc. 14), move for an Order dismissing the Complaint herein under FRCP 12(b)(6) for failure to state a claim upon which relief can be granted, or in the alternative, Defendants move for summary judgment and as grounds thereof the Defendants would state:

A. Background

1. The Plaintiff has sued the City of St. Petersburg and Officer Swanson personally for damages arising of the death of his dog.
2. Plaintiff alleges in his Complaint that the dog “snapped” at a neighbor. Plaintiff Complaint, Doc. 17, par. 26.
3. Plaintiff further alleges that the dog “reportedly bared his teeth and started growling at her.” Plaintiff Complaint, Doc. 17, par. 28.

4. Officer Swanson had been called to the scene, along with Officer Fotovat, concerning an aggressive dog. Affidavit of Swanson, Doc. 8-1.

5. In fact, a neighbor made two calls to the police, complaining about an “aggressive” dog each time. Doc. 8-2, transcript of call.

6. Officer Swanson, an owner of two dogs herself, has had numerous contacts with dogs without having to resort to force. Affidavit of Swanson, par. 4 (Doc. 8-1).

7. Upon contact with the complained of aggressive dog, who was running loose in the neighborhood in violation of St. Petersburg City Code Sec. 4-55, Officer Swanson attempted to lure the dog into her cruiser with beef jerky and contain it. Animal Control Services will not respond to an uncontained or roaming dog. Swanson, Doc. 8-7, par. 7.

8. After the dog refused to enter the cruiser, the dog turned his head towards the officer, bared its teeth and began snarling and growling viciously, while snapping its jaws at the officer. Swanson, Doc. 8-1, par. 7.

9. Officer Swanson attempted to give the dog space and speak to the dog in a calm and reassuring manner while walking backwards from the dog. The dog suddenly charged with the teeth bared and lips drawn back while growling. The dog jumped off the ground and lunged toward her face. To protect herself Officer Swanson unholstered her gun and fired one shot at the dog. Swanson, Doc. 8-1, par. 8.

10. Officer Swanson only shot to protect herself and not to violate anyone’s clearly established constitutional rights. Swanson, Doc. 8-1, par. 9.

11. Plaintiff alleges that the dog attack was “inconsistent with his breed and temperament.” Plaintiff’s Complaint, Doc. 17, par. 30. The dog had in fact on a prior occasion, December 24, 2010, bit a citizen when the dog was again running loose. The victim encountered

the dog and was bit. The dog was neither licensed nor vaccinated. Doc. 8-3 and Doc. 8-4, St. Petersburg Call for Service Report; Animal Services Call Detail Report.

12. The attack on Officer Swanson was at least the third known attack or aggressive behavior by the dog.

13. Officer Swanson's actions were reasonable and lawful.

B. Plaintiff Fails to State a Cause of Action of Trespass

14. Plaintiff claims the tort of trespass for the killing of his dog. Plaintiff fails to state a cause of action.

15. Trespass to chattel is the intentional use or interference with the property of another, without justification. Officer Swanson had justification as a matter of law and thus Plaintiff has failed to state a cause of action against her.

C. Plaintiff has Failed to State a Cause of Action of Conversion

16. Plaintiff claims the tort of conversion for the killing of his dog. Plaintiff fails to state a cause of action.

17. The tort of conversion constitutes the exercise of wrongful dominion or control over property. Officer Swanson had justification as a matter of law to protect herself against an aggressive dog, and thus Plaintiff has failed to state a cause of action against her.

D. Plaintiff has failed to State a Cause of Action for Animal Cruelty

18. Plaintiff claims animal cruelty pursuant to Fla. Stat. §828.12. Plaintiff fails to meet federal pleading standards and states in conclusory terms a violation of the statute.

19. Florida Statute §828.12 requires the cruelty to be "unnecessary". Officer Swanson's actions in defending herself against an attacking dog are reasonable and necessary as a matter of law. Plaintiff has failed to state a cause of action against Officer Swanson.

E. Plaintiff Fails to State a Cause of Action for Intentional Infliction of Emotional Distress

20. The Plaintiff has brought a claim of Intentional Infliction of Emotional Distress against Officer Swanson. Plaintiff has failed to state a cause of action.

21. Plaintiff states in his Complaint he was not present while his dog was running loose, acting aggressive and attacking Officer Swanson. Plaintiff's Complaint, Doc. 17, par. 27, 29, 36. Thus the claim is barred by the impact doctrine.

22. In addition to being barred by the impact doctrine, Plaintiff has failed to state a claim that rises to the required level of outrageous conduct as a matter of law.

F. Plaintiffs Fail to State a Cause of Action for Negligence

23 The Plaintiffs have brought a negligence claim against the City of St. Petersburg and Officer Swanson. Officer Swanson cannot be sued personally for negligent actions occurring within the course and scope of her employment. Fla. Stat. §768.28. The Plaintiffs have failed to state a cause of action for failure to train against the City in that the underlying actions were lawful.

G. Damages

24. Plaintiff states in his Complaint that the dog "had no fair market value." Plaintiff's Complaint, Doc. 17, par. 43.

25. Plaintiff seeks "intrinsic value and loss of use" of the dog, "special and general damages", non-economic damages for grief and emotional distress. Such damages are not recoverable under the claim asserted by the Plaintiff. Doc. 17, p. 19.

WHEREFORE, the Defendants Officer Misty Swanson and the City of St. Petersburg move to dismiss the claim under FRCP 12(b)(6) for failure to state a claim upon which relief can be granted, or in the alternative, for summary judgment in favor of the Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS CITY OF ST.
PETERSBURG AND SWANSON DISPOSITIVE MOTION TO DISMISS OR IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT**

A. Standard of Review

1. Motion to Dismiss

In deciding a Motion to Dismiss under Rule 12(b)(6) the Court is required to view the Complaint in the light most favorable to the Plaintiff. *Murphy v. Federal Deposit*, 208 F. 3d 959, 962 (11th Cir. 2000). A Plaintiff is required to allege more than conclusions. Dismissal is appropriate if the allegations do not raise the Plaintiff's right to relief above the speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

2. Summary Judgment

The Court may grant summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The movant bears the initial responsibility for demonstrating the absence of a material issue. After this burden is met, it shifts to the non-moving party to show evidence to support its claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Matsushita Electronic v. Zenith*, 475 U.S. 574, 586 (1986).

Under the circumstances alleged, Officer Misty Swanson acted reasonably in defending herself by shooting the dog.

In *Esterson v. Broward County Sheriff's Department*, 2010 U.S. Dist. LEXIS 117490 (S.D. Fla. 2009) a Deputy responded to a call and was confronted by an aggressive dog. The dog charged at her, causing the deputy to shoot the dog. *Id.*, at *12. The court dismissed the case, since there was no predicate constitutional violation.

Comparing the present case with *Esterson*, it is apparent here as well that not only did Officer Swanson no violate any known established right, she did not violate any rights at all.

Two calls were received regarding an aggressive dog. The dog was loose in violation of St. Petersburg City Code Sec. 4-55. The officer acted reasonably and responsibly in trying to protect the citizen who called the police, and then in trying to protect herself from an attacking dog. Subsequently, it was learned the dog had a history of being loose and aggressive or biting.

Officer Swanson's actions are consistent within the actions of the deputy in *Esterson* and the claims against her should also be dismissed.

Hatch v. Grosinger, 2003 LEXIS 3845 (D.C. Minn. 2003) is similarly instructive. Plaintiff's dog was a 58 pound black Labrador retriever, which the owner described as "gentle" and "nice". *Id.*, at *2. Sheriff's deputies had to enter the Plaintiff's fenced yard. The dog made an aggressive charge at three deputies. The deputy fired his gun, killing the dog. *Id.*, at *14-15.

The court noted that while one could question the defendant's decision to use the maximum level of force, in conclusion a reasonable officer could well have decided that the dog posed an imminent threat. *Id.*, at *14.

In *Williams v. Voss*, 2011 LEXIS 105050 (D.C. Minn. 2011) the defendant officer was serving a search warrant. While in the plaintiff's home their dog charged aggressively toward the officer. The officer shot the dog. Although the plaintiff claimed the dog was not being aggressive, she did not actually witness the shooting (as in the present case with the Glass dog). *Id.*, at *11.

The *Williams* court noted that courts have held that it is reasonable to shoot a dog that poses a risk to officer safety. *Id.*, at *13, citing to *Bailey v. Schmidt*, 239 F. Appx. 306, 308 (8th Cir. 2007); *Dziekan v. Gaynor*, 376 F. Supp. 2d 267, 271-72 (D.Conn. 2005). The court noted the "common denominator" for all cases is officer safety. *Williams* at *14.

In *Dziekan v. Gaynor* the officer shot a 55-60 pound unleashed dog running in circles within 15 feet of the officer. The officer stated the dog had its mouth open and the owner made no effort to control the dog. The court dismissed the case against the officer on qualified immunity grounds, finding the officer objectively reasonable in his belief that his actions would not violate clearly established law. *Dziekan* at 273. The government retains a strong interest in allowing law enforcement officers to protect themselves and the citizenry from animal attacks. *Id.*, at 270.

Similarly, the court in *Warboys v. Proulx*, 303 F. Supp. 2d 111 (D.C. Conn. 2004) dismissed a case against an officer. While tracking a suspect the plaintiff's family dog escaped through an open door. The court accepted the plaintiff's testimony that the dog "was a gentle, loving pet that had never attacked an animal or person." *Id.*, at 114. As the dog came towards the officer he unholstered his gun and shot him. *Id.*

The court acknowledged that the dog may have approached the officer merely to greet and sniff them, or to receive a pat on the head. However, the court noted that had the officer waited to see the dog's true intentions it would have been too late. The court concluded that the law did not require the officer to wait until the approaching dog was leaping at him before taking protective action. *Id.*, at 118. The law does not require a reasonable officer in his circumstances to have used less force to protect himself. *Id.*, at 119.

Altman v. City of High Point, 330 F. 3d 194 (4th Cir. 2003) involved several dogs, one of which was a Golden Retriever/Labrador mix that had a habit of escaping his fenced-in yard. The officer was responding to a call that the dog had bitten someone. *Id.*, at 198. When the officer arrived on the scene, the dog charged at him, stopped, but continued to growl. The

dog then retreated. The dog charged again, growling and showing his teeth. At that time the officer shot and killed the dog. *Id.*, at 198-99.

The court in *Altman* did find that a dog is an “effect” for purposes of the Fourth Amendment. *Id.*, at 202. The court then looked to whether the “seizure” (shooting) of the dog was reasonable. *Id.*, at 205.

In analyzing whether a constitutional violation took place, the “substantial” interest in protecting citizens from the dangers of dogs was noted. *Id.* Significantly, the court found . . .

When a dog leaves the control of his owner and runs at large in a public space, the government interest in controlling the animal and preventing the evils mentioned above waxes dramatically, while the private interest correspondingly wanes. Put simply, while we do not denigrate the possessory interest a dog owner has in his pet, we do conclude that dog owners forfeit many of those possessory interests when they allow their dogs to run at large, unleashed, controlled and unsupervised, for at that point the dog ceases to become simply a personal effect and takes on the nature of a public nuisance.

Id. at 205-206.

The court held that the shooting was not objectively unreasonable. *Id.*, at 206-207.

The Plaintiff’s dog here, after having previously attached and bit someone, and been held in quarantine, was again roaming the streets, this time at midnight. The dog was reported as aggressive by a civilian in two calls to the police. Police Officer Misty Swanson tried to confine the dog for animal control by coaxing it with snacks. The dog then attacked her and she reasonably and lawfully protected herself and the citizens of the community

As the court for the Southern District of Florida in *Esterson* stated . . . “Plaintiffs have cited no caselaw that makes it sufficiently clear that the Fourth Amendment prohibits a

sheriff's deputy from shooting an animal who, based on the undisputed record evidence, was threatening her life." 2010 LEXIS 117490 at *23. See also *Hatch*, 2003 LEXIS 3845 (reasonable officer could conclude that dog posed a threat; no constitutional violation); *Williams*, 2011 LEXIS 105050; *Dzielean*, 376 F. Supp. 267, 271-72 (situation called for split-second decision-making; dog posed a threat; the officer's conduct did not constitute an unreasonable search.).

As the court stated in *Warboys*, 303 F. Supp. 2d at 117, the killing of the dog was reasonable as a matter of law.

D. Trespass

Plaintiff asserts an action for the tort of trespass to chattels. Trespass is the intentional interference with a chattel of another, without justification. See, *Coddington v. Staab*, 716 So. 2d 850, 851 (Fla. 4th DCA 1998). Since the actions of Officer Swanson were with justification as a matter of law, the Plaintiff has failed to state a cause of action.

E. Conversion

Plaintiff asserts an action for the tort of conversion. Conversion is the wrongful dominion or control of property of another. *United American Bank v. Seligman*, 599 So. 2d 1014, 1016 (Fla. 5th DCA 1992). Again, since the actions of Officer Swanson were reasonable and lawful, they were not "wrongful". Plaintiff has failed to state a cause of action of conversion.

F. Animal Cruelty

Plaintiff claims cruelty pursuant to Fla. Stat. §828.12. The Plaintiff fails to state how the statute was violated, or how it encompasses a civil tort action. Florida Statute §828.12

requires the cruelty to be “unnecessary”. Officer Swanson’s actions in defending herself against an attacking aggressive loose dog were necessary and lawful.

G. Intentional Infliction of Emotional Distress

The Plaintiff was not present while his dog attacked Officer Swanson, resulting in the death of the dog. The impact doctrine precludes recovery for the death of the dog by the plaintiff. *Kennedy v. Byas*, 867 So. 2d 1195, 1197 (Fla. 1st DCA 2004). The impact doctrine requires some physical impact prior to the recovery of damages for emotional distress. The Plaintiff has not and cannot allege such an impact in this case, and has failed to state a cause of action. See also, *Siam v. Tampa Bay Downs*, 2009 LEXIS 31530 (M.D. Fla. 2009) (must have severe suffering from outrageous conduct as a matter of law. Conduct must be atrocious and utterly intolerable).

H. Negligence

The Plaintiff asserts generalized claims against the City of St. Petersburg, asserting a failure to train, and a policy or custom of unlawful conduct. Where the Plaintiff has failed to demonstrate an improper act, a municipality cannot be held liable for failure to train. *Hatch*, 2003 LEXIS 3845 at *16-17, citing to *Abbott v. City of Crocker*, 30 F. 3d 994, 999 (8th Cir. 1994). In *Hatch* because the court concluded the shooting of the dog was not an unreasonable seizure, the failure to train allegation must be dismissed.

Similarly, in *Warboys*, the court dismissed the negligent supervision claim because the court concluded there was no constitutional injury as a result of the officer’s shooting of a dog. 303 F. Supp. 2d at 120.

The Plaintiff also has brought a negligence action against Officer Swanson personally. The allegations are barred by Fla. Stat. §768.28. Negligence acts occurring within

the course and scope of her employment which are negligent, but not willful, are barred against the individual officer.

I. Damages

The Plaintiff states that the dog had no fair market value. As these are the only types of damages lawfully available to the Plaintiff, should he prove his case, the Plaintiff does not have a claim he can prevail on.

Non-economic damages for grief and emotional distress are barred by the impact doctrine. See, *Kennedy*, 867 so. 2d at 1195.

Conclusion

Wherefore, the Defendant's Officer Misty Swanson and City of St. Petersburg move to dismiss the claim under FRCP 12(b) (6) or in the alternative for summary judgment for the Defendants.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 27, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Roy L. Glass, Esquire, at lroyglas@tampabay.rr.com.

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

vs.

Case No. 8:12-cv-02405-T-26TGW

CITY OF ST. PETERSBURG, FLORIDA
A Municipal Corporation and Saint Petersburg
Police Officer, MISTY SWANSON, jointly and
severally,

Defendants.

**DEFENDANTS' CITY OF ST. PETERSBURG AND SWANSON RESPONSE TO
PLAINTIFFS' MOTION TO REMAND**

Comes Now the Defendants, City of St. Petersburg and Misty Swanson, pursuant to Court Order (Doc. 14) and files its response to Plaintiffs' Motion to Remand (Doc. 16) and as grounds thereof would state:

1. The Plaintiffs are asking this Court to remand the matter back to State Court. The Defendants oppose the Plaintiffs request.

2. This matter was properly before the Court due the Defendants removal of the Plaintiffs' original Complaint which sought Federal Constitutional relief.

3. After this Court's dismissal of the original Complaint, the Plaintiffs filed an Amended Complaint (Doc. 17) which abandons the previously dismissed Federal claims.

4. The dismissal or abandonment of the Federal claims does not deprive this Court of jurisdiction. Once the Court has exercised jurisdiction over the State claim, elimination of the Federal claim does not deprive this Court of jurisdiction. *New Rock Assets v. Preferred Entity*, 101 F. 3d 1492, 1505 (3rd Cir. 1996) (corrected citation), citing to *Lentino v. Fringe Emp. Plans*,

611 F. 2d 474, 479 (3rd Cir. 1979); *Palmer v. Hospital Auth.*, 22 F. 3d 1559, 1567-68 (11th Cir. 1994); See *Smith v. Florida*, 2012 LEXIS 110460 (M.D. Fla. 2012).

5. The Defendants are in agreement with the Plaintiffs that this Court has the discretion to keep or remand the case. Plaintiffs' Motion to Remand, Doc. 16, par. 6, and cases therein.

6. Since this Court has the discretion to maintain jurisdiction over the case, the Defendants request the Court to do so. This Court, in albeit a short time, has already made substantive and procedural rulings in the case. There have been at least 17 document filings, including two Complaints and two Motions to Dismiss. There is pending before the Court the Defendants' Motion to Dismiss the Plaintiffs' Amended Complaint. Doc. 18. In the interests of judicial economy and convenience, the Court is asked to utilize its discretion to retain jurisdiction.

7. For the foregoing reasons, the Defendants oppose the Plaintiffs' Motion to Remand (Doc. 16).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 27, 2012, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: Roy L. Glass, Esquire, at lroyglas@tampabay.rr.com.

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

LAUREN RACHEL GLASS and
ROY L. GLASS,

Plaintiffs,

v.

CASE NO: 8:12-cv-2405-T-26TGW

CITY OF SAINT PETERSBURG, FLORIDA,
and MISTY SWANSON,

Defendants.

ORDER

Pending before the Court is Plaintiffs' Renewed and Amended Motion to Remand and Defendants' response in opposition.¹ After careful consideration of the parties' submissions, together with the procedural history of this case, the Court concludes that the motion is due to be granted.

PROCEDURAL HISTORY

Plaintiffs filed a five-count complaint against Defendants in the Circuit Court of Pinellas County, Florida, alleging four state law claims and one federal claim based on 42 U.S.C. § 1983 with regard to the shooting death of their dog Boomer.² Defendants timely

¹ See dockets 16 and 19.

² See docket 2.

removed the case to this Court based on federal question jurisdiction pursuant to 28 U.S.C. § 1331 with respect to Plaintiffs' § 1983 claim and also asserted that the Court possessed supplemental jurisdiction over the state law claims by virtue of 28 U.S.C. § 1367.³ Defendants later filed a motion to dismiss Plaintiffs' complaint or in the alternative a motion for summary judgment.⁴ After examining Plaintiffs' complaint, the Court determined that it was a "quintessential shotgun" pleading and, acting in accord with well settled Eleventh Circuit jurisprudence, directed Plaintiffs to replead their complaint, thereby rendering Defendants' motions moot.⁵

Plaintiffs responded with a motion seeking voluntary dismissal of their § 1983 claim and a motion to remand.⁶ The Court denied the motion to dismiss, instructed Plaintiffs to replead their complaint, commenting that they were free to eliminate their federal claim if they so desired, denied the motion to remand as moot, and advised that they could simultaneously file a renewed motion to remand with the repleaded complaint.⁷ The Plaintiffs have now repleaded their complaint in which they eliminated their federal claim, thus leaving only state law claims as the basis for relief against

³ See docket 1.

⁴ See docket 8.

⁵ See docket 9.

⁶ See dockets 9 and 13.

⁷ See docket 14.

Defendants.⁸ They have also filed a renewed motion to remand to which Defendants have responded in opposition. Defendants have also filed a second motion to dismiss or alternative motion for summary judgment.⁹

ANALYSIS

Although Plaintiffs have now excised their federal claim in their repleaded complaint, leaving only state law causes of action as their basis for relief against Defendants, the Court continues to enjoy subject matter jurisdiction in this case because the existence of such jurisdiction is determined at the time of removal. See Behlen v. Merrill Lynch, 311 F.3d 1087, 1095 (11th Cir. 2002). As noted, at the time of removal of Plaintiffs' initial complaint, they alleged a federal claim against Defendants, thus conferring subject matter federal question jurisdiction on this Court. Id. The issue now before this Court is whether the Court should exercise its discretion by declining to exercise supplemental jurisdiction over the remaining state law claims. Id.

In making this discretionary determination, the Court must consider the principles of economy, convenience, fairness, and comity. See City of Chicago v. International Coll. of Surgeons, 522 U.S. 156, 173-74, 118 S.Ct. 523, 533, 139 L.Ed.2d. 525 (1997) (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350, 108 S. Ct. 614, 619, 98 L.

⁸ See docket 17.

⁹ See docket 19.

Ed. 2d 720 (1988)). After doing so, those principles dictate that the case be returned to state court.

First, economy and convenience weigh heavily in favor of remand because this case is in its very early stages, with the Defendants having yet to file an answer due to the pendency of their motion to dismiss or alternative motion for summary judgment and the Court having yet to enter a case management and scheduling order. Furthermore, the Court's judicial labor to date has been relatively minimal and has been limited to the issue of whether it should retain jurisdiction in this matter. As the Supreme Court instructed in Carnegie-Mellon, "[w]hen the single federal-law claim in the action [is] eliminated at an early stage of the litigation, the District Court ha[s] a powerful reason to choose not to continue to exercise jurisdiction." 484 U.S. at 351, 108 S. Ct. at 619; see also Savoy v. Pasco Cnty. Sch. Bd., 2012 WL 3128943, at *1 (M.D. Fla. 2012) (concluding, as have several other courts, "that remand was appropriate when the plaintiff amended its complaint in the early stages of litigation after removal and only state law claims remained.") (eight citations omitted).

Second, principles of comity also weigh heavily in favor of returning this case to state court because that court is better suited to determine the unique issues of state law raised by Plaintiffs' repleaded complaint. See Lake Cty. v. NRG/Recovery Grp., Inc., 144 F. Supp. 2d 1316, 1321 (M.D. Fla. 2001). Finally, Defendants have failed to argue that principles of fairness will be offended if the case is remanded to state court. Even in the absence of such an argument, the Court can discern no such offense against fairness

inuring to the detriment of Defendants with regard to forum manipulation on the part of Plaintiffs by dropping their federal claim, especially in light of the fact that the four state law claims in the original complaint predominated over the sole federal claim and the Plaintiffs eliminated the federal claim early in the case. Id.; Savoy, 2012 WL 3128943, at *1.

ACCORDINGLY, for the reasons expressed, it is **ORDERED AND ADJUDGED** that Plaintiffs' Renewed and Amended Motion to Remand (Dkt. 16) is **granted**. The clerk is directed to remand this case to the Circuit Court of Pinellas County, Florida, to close the case following remand, and to terminate any pending motions. The Court will defer ruling on Defendants' pending motion to dismiss or alternative motion for summary judgment to the state court after remand.

DONE AND ORDERED at Tampa, Florida, on November 28, 2012.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record